



The Assam Professions, Trades, Callings and Employments Taxation Act, 1947

Act 6 of 1947

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THE ASSAM PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENTS TAXATION ACT, 1947 **

(ASSAM ACT VI OF 1947)

(Received the assent of the Governor on the 29th March, 1947)

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An Act to levy a tax on professions, trades, callings and employments.

WHEREAS it is expedient to impose a tax on professions, trades, Callings and employments ;

It is hereby enacted as follows :—

PRELIMINARY

1. **Short title, extent and commencement**—(1) This Act may be called the Assam Professions, Trades, Callings and Employments Taxation Act, 1947.
- (2) It extends to the whole of Assam*
- (3) It shall come into force on such date² as the [State]¹ Government may, by notification in the official Gazette, appoint.

LEGISLATIVE HISTORY

1. The word "State" was substituted for the word "Provincial" by A.O. 1950.
2. This Act was brought into force with effect from 1st May, 1947 vide Notification No. BB. 94/45/50 dated 18th July, 1947.
- * It was extended to the Excluded and Partially Excluded Areas under section 92 of the Government of India Act, 1935 vide Notification Nos. L. 90/47/17 dated 9th April, 1948 and No. BB. 94/45/74 dated 23rd January, 1948.
- ** The Statement of objects and reasons was published in Assam Gazette, 1947, part V page 35.

This Act was enacted in 1947 to levy a tax on professions, trades, callings and employments.

This Act is a pre-constitution statute. The power to levy this tax was derived by the Provincial Legislature from entry 46 of List II of the Government of India Act, 1935 which read as follows :—

"Taxes on professions, trades, callings and employments."

This power was subject to the provisions of section 142 A of the Government of India Act, 1935.

The corresponding provisions in the Constitution of India are contained in Entry 60 of List II of the Seventh Schedule to the Constitution of India and article 276. Entry 60 of List II of the Seventh Schedule reads as follows :—

“60. Taxes on professions, trades, callings and employments,”

Article 276 of the constitution of India which corresponds to section 142A of the Government of India Act provides that a tax on professions will not be void on the ground that it is a tax on income. It limits the amount of tax to Rs. 250/- except existing levies. Article 276 reads :—

“276. Taxes on profession, trades, callings and employments :—

(1) Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the state by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum :

Provided that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, or which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law and any law so made by Parliament may be made either generally or in relation to any specified states, municipalities, boards or authorities.

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect of taxes on income accruing from or arising out of professions, trades, callings and employments.

To properly understand the nature of a tax on professions, trades, callings and employment, a brief history of corresponding provisions of the Government of India Act, 1935 is necessary.

The Government of India Act, 1935 in entry 46 of list II provided for taxes on professions, trades, callings and employments. This entry was made subject to section 142A of the Government of India Act, 1935 which was substantially the same as article 276. It provides that a tax on professions was not to be held void on the ground that it was a tax on income but it limited the amount of tax to Rs 50 per annum, continuing the existing levies, if they were for a larger amount, until the Federal Legislature otherwise provided. It was further provided that nothing in that section was to be construed as limiting the power of the Federal Legislature to levy a tax on the income arising from such professions etc.

In the constitution of India intential provisions were incorporated in entry 60 of list II of the seventh schedule and article 276.

A tax on professions is not necessarily connected with income. Tax on professions was imposed by the Calcutta Municipal Corporation at a flat rate ranging from Rs. 50 to Rs. 3 from individuals and ranging from Rs. 200 to Rs. 20 on companies, calculated according to the amount of their paid-up capital. However, a number of states including Assam levied professions tax and related it to income, the maximum amount of tax being a small amount. In Assam, the maximum was Rs. 50 which was later in the year 1954 raised to Rs. 250.

The basic difference between a tax on income and a tax on professions is that in the former income is the object of taxation whereas in the later income is only a measure of taxation. Income in professions tax is not the subject but the measure of tax. The income from trades, professions, callings and employments is used merely for the purpose of determining the importance of the person carrying on trade etc, to be taxed. The income is the rough and ready measure of the tax and it is not the subject of the tax as in the income tax Act. Income-tax and professions tax are distinct and separate imposts. A tax on income can be imposed if there is income. A tax on professions can be imposed if a person, in fact, carries on a profession etc. and irrespective of the question of income.

However, to avoid the anomalies, article 276 provides that tax on professions etc, will not be held to be void on the ground that it is a tax on income. It also limits the amount of tax to Rs. 250 per annum.

The combined effect of article 276 (1) which precludes a challenge on the ground that the tax was on income and article 276 (2) proviso, which saves existing taxes is, that notwithstanding that a professions tax may be a tax on income and notwithstanding that it exceeds Rs. 250 it can continue to be levied until provision to the contrary is made by Parliament by law.

In *Rajagopalachari v. Corp. of Madras* (1970) 53 ITR 454, 459, the Supreme Court examined the scope of professions tax and held that if a tax was one on professions, trades, callings and employments, article 274 (1) (S. 142A of Government of India Act) provides that it is not deemed to be a tax on income. But where the tax imposed is not a tax on profession, the state could not levy a tax on income and call it a "profession tax". While deciding the validity of a "profession tax" under section 111(1) of Madras City Municipal Act, 1919, as amended in 1936, the Supreme Court held that a tax on pension was a tax on income.

In *Kamata Prasad Aggarwal v. Executive Officer Ballabgarh* (1974) 4 S.C.C., 440, the Supreme Court examined the provisions of Article 276(2) of the constitution and held the maximum limit of Rs. 250 prescribed in Article 276(2) is with reference the tax payable to the state or to any one municipality, district Board, local Board, or local Authority. Article 276(2) shows that the constitution uses the words "any one person" in juxtaposition with any one municipality, district board, local board or other authority. The words "the total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other authority" mean that the tax of and upto the sum of Rs. 250 can be imposed by any one of the authorities mentioned in Article 276(2). The word "total" relates to an authority levying various taxes and not all authorities put together. Hence, if profession taxes are levied both by the State Government and a municipality, district board the maximum limit will apply to each the taxes separately. The fact that the total amount of the two taxes exceeds Rs. 250 per annum will not invalidate them provided the limit of Rs. 250 is not exceeded if the taxes are taken separately.

The proviso to clause (2) of article 276 saves the validity of pre-constitution laws levying or permitting the levy of taxes on professions, trades, callings or employments, beyond Rs 250. The proviso refers to a tax which was in force in the financial year immediately before the commencement of the constitution. It has been held that where though the law imposing a tax was in force, the tax under it had not been levied by the particular State for some years before the constitution, the tax could not be said to have been "in force" in the financial year immediately before the constitution. The proviso to clause (2) preserves only the rights which had accrued under the laws existing before the commencement of the Constitution. After January 26, 1950, there is no enacting power in the State Legislature either to amend the machinery parts of legislation dealing with professions tax, or to fill gaps therein so as to continue the levy under the new rules beyond the constitutional limitation imposed by the article

(*Harrisons and Crossfields Ltd. v. Commissioner, Quilon Municipality* (AIR 1962 Ker. 185, 190 ; Commr. *Quilon v. H & G Ltd.* AIR 1964 Ker 25).

The expression "any one person" in article 276 includes a juristic person like a company.

2. Definitions—In this Act, unless there is anything repugnant in the subject or context—

- (a) "assessing authority" in a particular area means the Superintendent of Taxes referred to in section 6 exercising jurisdiction in that area ;¹
- (b) "Assistant Commissioner of Taxes (Appeals) means a person appointed to be an Assistant Commissioner of Taxes (Appeals) under sub-section (2) of section 6 ;²
- (c) "person" includes a company, firm or other association of persons ;³
- (d) "assessee" means a person by whom tax is payable under the provisions of this Act ;⁴
- (e) "prescribed" means prescribed by rules made under this Act ;⁵
- (f) "previous year" means the twelve months ending on the 31st of March next preceding the year for which assessment is to be made or if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, or if the accounts of an assessee are made up to a date ending on the last date of Bengali or Ramnavami year beyond the said 31st day of March then at the option of the assessee the year ending on the day to which his accounts have been so made up :
 Provided that if this option has once been exercised by the assessee, it shall not again be exercised except with the consent of the Commissioner or such other officer as may be authorised by him in this behalf, and upon such conditions as the Commissioner or such other officer may think fit ;⁶

- (g) "principal officer" means with reference to—
 - (i) a Government, the head of an office or the disbursing officer,
 - (ii) a local authority, company, firm or other association of persons, the Chairman, Secretary, Treasurer, Manager, or Agent of such local authority, company, firm or other association of persons ;⁷
- (h) "State" means the State of Assam ;⁸
- (i) "total gross income" means aggregate of income derived from all sources.⁹

LEGISLATIVE HISTORY

1. The original clause(a) was renumbered first as clause(aa) and then as clause(c). The existing clause (a) was inserted by Assam Act XIII of 1952 w.e.f. 15.10.1952. By Assam Act XXX of 1972 the words "superintendent of Taxes" were substituted for the word "Superintendent".
2. The original clause "(b)" was remembered as clause "(e)" and existing Clause(b) was inserted by Assam Act XXX of 1972 w.e.f. 13.12.72.
3. This clause, originally numbered as clause (a), was renumbered as clause(aa) by Assam Act XIII of 1952 and again renumbered as clause (c) by Assam Act XXX of 1972.
4. Clause(d) was first inserted in the principal Act as clause "(aaa)" by Assam Act XVII of 1971 w.e.f. 1.8.71. It was renumbered as clause(d) by Assam Act XXX of 1972.
5. Clause(e) was originally numbered as clause "(b)". It was renumbered as clause "(e)" by Assam Act XXX of 1972.
6. Clause(f) was originally numbered as clause "(c)" and it read as follows :—
 "(b)" previous year means twelve months ending on 31st of March next preceding the year for which the assessment is to be made." It was substituted by the existing clause by Assam Act XVII of 1971 w.e.f. 1.8.71. It was renumbered as clause "(f)" by Assam Act XXX of 1972.
7. The existing clause (g) was originally numbered as clause(d) in the principal Act. It was renumbered as clause(f) by Assam Act XXX of 1972.
 Item (i) of this clause was substituted by Assam Act XIII of 1952.
8. Clause "(h)" was originally numbered as clause "(e)". It was renumbered as clause(h) by Assam Act XXX of 1972. The word "State" in this clause was substituted by A.O. 1950 for "Provincial".
9. Clause(i) was originally numbered as clause(f). It was renumbered as clause "(i)" by Assam Act XXX of 1972.

Previous year [clause(f)].—The expression "previous year" has been defined in clause (f) of section 2 to mean a period of twelve months ending on 31st March next preceding the year for which assessment is to be made. This clause however permits a person to have any period of twelve months ending with the previous financial year if he has closed his accounts on a date earlier than 31st March. In certain cases special years have been recognised. The assessee has a right to make a choice to adopt a parti-

cular previous year and in the absence of assessee's choice twelve months ending on 31st March precedent to the year for which assessment is to be made can be held to be previous year.

Though under section 3, liability to pay tax is for each financial year, the tax payable under this Act is determined under section 5 with reference to his gross total income during the previous year. The definition of "previous year" thus is very important for the purposes of assessment under the Act.

As defined in clause (f) of section 2, the expression "previous year" substantially means an accounting year comprised of a full period of twelve months adopted by the assessee for maintaining his accounts but different from the financial year and preceding the financial year, which is the assessment year.

The proviso to clause (f) provides that if the assessee wants to change his previous year, he shall not be entitled to do so except with the consent of the Commissioner or such other officer authorised by the Commissioner in this behalf and upon such conditions as the Commissioner or such other officer may think fit to impose.

Total Gross income [clause (i)]—The expression "total gross income" as defined in section 2 (i) means the aggregate of income derived from various professions, trades, callings and employments. The expression "income" appearing in the definition is synonymous with the expressions gains, profit, revenues. Income as a subject of taxation imports an increase of wealth out of which money may be taken to satisfy the pecuniary imposition made by the taxing statute. For purpose of taxation "income" means net income and not gross income. Preposition that the expression income means all that which come in cannot possibly be supported (1881) 6 A. C. 373 ; AIR 1928 Mad. 346 and AIR 1931 Mad. 45. Foll (1959) 61 Punj. L. R. 835 ; ILR (1960) Pun. 128.

In computing the "gross income" for purposes of taxation under the Act, income derived from trades or callings etc. carried on within the State can only be taken into account. The Act does not authorise the assessing authority to take into account gross income of an assessee from a trade, calling profession or employment, carried on outside the State. The view, therefore, that assessment of profession tax is made on the basis of total gross income whether earned within the State or outside the State is not sustainable (1960) 62 Puj. L.R. 846, ILR(1961) 1 Puj. 136.

CHAPTER I

LIABILITY TO AND CHARGE OF TAX

3. Liability to tax—As from the first day of April 1947 and subject to the provisions of this Act, every person who carries on a trade either by himself or by an agent or representative, or who follows a profession or calling, or who is in employment, either wholly or in part within the [State]¹ shall be liable to pay for each financial year a tax in respect of such profession, trade, calling or employment and in addition to any tax, rate, duty or fee which he is liable to pay under any other enactment for the time being in force :

Provided that for the purposes of this section a person on leave shall be deemed to be a person in employment.

LEGISLATIVE HISTORY

The word "State" was substituted for the word "Provincial" by A. O., 1950.

Section 3 is the charging section.

The following classes of persons are made liable to tax under the Act :—

- (a) Every person who carries on trade either by himself or by an agent or representative, or
- (b) who follows a profession or calling, or
- (c) who is in employment, either wholly or in part within the state.

Persons falling in any of the above categories are liable to pay, for each financial year, a tax in respect of such profession, trade, calling or employment. This tax is in addition to any tax, rate, duty or fee which such person may be liable to pay under any other enactment for the time being in force.

Thus, the levy of tax under this section is on every person who carries on a trade, or follows a profession, or calling or who is in employment either wholly or in part in the state of Assam. The liability is in respect of such profession, trade, calling or employment.

The four words "professions, trades, callings and employments" do not seem to be used in a mutually exclusive sense. These words overlap one another and appear to have been used by way of abundant caution in order

to make the provisions broad-based and comprehensive (identical wordings have been used in entry 60 of list II of the Seventh Schedule to the constitution from where the power to levy tax has been derived by the State Legislature). None of these words has any particular technical meaning and even if they had any definitive significance the object of putting them all together is to ensure that no particular category of person is eliminated. (*Walaiti Ram Nathu Ram v. Municipal committee AIR 1960 Punj 669*)

Profession or calling.—The word ‘professions’ means a calling, an employment. It also means ‘occupation’, if not mechanical or the agricultural or the like, to whatever one devotes one’s self ; the business which one professes to understand and to follow for subsistence. Among other things, it means a vocation in which a professional knowledge of some department of science or learning is used by its practical application to the affairs of others, either in advising, guiding or teaching them or in serving their interest or welfare in the practice of an art founded on it. (“Words & Phrases”, *Permanent Edition, volume 34 page 201*) “Callings” according to Oxford Dictionary signifies persons following a particular business.

A ‘profession’ involves the idea of an occupation requiring either purely intellectual skill, or of any manual skill, as in painting and sculpture, or surgery, skill controlled by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale, or arrangements for the production or sale of commodities. The line of demarcation may vary from time to time. (*Commissioners of Inland Revenue v. Maxse 12 Tax Cas. 41, 61*)

It is, therefore, clear that no hard and fast rule can be laid down as to when an income can be said to arise from the exercise of a profession, and each case has to be decided on its own facts. The term ‘profession’ is definitely used in law for a calling or the principal occupation on which one generally depends for one’s livelihood.

Money-lending is a profession or calling and a moneylender can be taxed under this Act. (*Ratanchand v. Panchayat Samiti, Sojat AIR 1967 Raj. 142*).

Trade.—“Trade” in its primary meaning is the exchanging of goods for goods or goods for money ; in its secondary meaning it is repeated activity being manual or mercantile, as distinguished from liberal arts or learned professions or agriculture. ‘Trade’ is not only in the etymological or dictionary sense but in legal usage, a term of the widest scope ; it may mean the occupation of a small shop-keeper equally with that of a commercial magnate and may also mean a skilled craft. [*Per Lord Wright, National*

Association of Local Govt. Officers v. Bolton Corpn. 1943 A.C. 166, 184 (H.L.) ; *Smith Barry v. Cordy* 28 T.C. 250, 258 C. A.]. The question whether trade is carried on by a person at a given place must be determined on a consideration of all the circumstances. No test or set of tests which is or are decisive for all cases can be evolved for determining whether a person carries on trade at a particular place. The question though one of mixed law and fact must in each case be determined on a consideration of the nature of the trade, the various steps taken for carrying on the trade and other relevant facts [*State of Punjab and another v. Bajaj Electrical Ltd.* 70 I.T.R. 730 S.C. : (1968)2 S.C.R 536.]

The words "trades and callings" seem to have been used in the widest sense in which they are generally used in fiscal statutes as connoting "any activity for gaining livelihood" (CF. *Mazagaon Dock v. I.T. Commr.* AIR 1958 S. C. 861, 866, *Kisan v. Bhusawal Municipality* AIR 1966 Bom. 15, 17).

The liability to pay tax on a person who carries on trade arises only when the trade is carried on in the state. It may be carried on by such person himself or by an agent or representative. (1)

Thus where a company, which had no branch or other place of business in the state or agent or representative there, supplied goods to the Government and certain semi-Government bodies in the state in execution of orders received at its branch office outside the state ; the goods were consigned for destination, inspection of goods was made within the state and the price was collected by presenting the bills or Railway receipts through banks, it was held that the company did not carry on trade within the state and was not liable to be assessed to tax under the Act (Ibid). (2)

Employment.—The tax under this Act is payable by a person "who is in employment." The "employment" must be "present employment" i. e. in employment during the financial year. The mere fact that a person has previously been in a profession or carried on a trade cannot justify a tax under this Act. [*C. Raja Gopalachari v. Corporation of Madras*, (1970) 53 ITR 454, 459 S. C.] Being a pensioner cannot be a profession, trade, business or calling, nor can tax on a person because he is in receipt of a pension be said to be tax on employment. Profession tax on persons in respect of any pension or income from investments is nothing but a tax on income falling within entry 82 of list I of the schedule VII to the constitution of India. As such no profession tax is leviable on a person in receipt of pension or income from investments (*Ibid*).

Under the proviso to section 3, for the purposes of section 3 a person on leave is deemed to be a person in employment.

Calling.—The word ‘calling’ is very wide. According to its dictionary meaning it means one’s usual occupation, vocation, business or trade. The words “trade” and “calling” are words of wide connotation. The words “trade” and “calling” must be read in their context and in conjunction with other words used in the same entry i. e. profession and employment and from that they must take their colour.

4. Rates of Tax.—The tax shall be levied at the rates specified in the schedule annexed to this Act.

The schedule prescribes the rates of tax. Different rates have been fixed for Hindu Undivided or Joint family and for other persons. The amount of tax is dependant on the total gross annual income of a person.

5. Determination of tax.—The tax payable by any person under this Act shall be determined with reference to his gross income during the previous year from his profession, trade, calling or employment.

Provided that the tax payable by any person shall not exceed [two hundred and fifty] ¹ rupees for any financial year.

LEGISLATIVE HISTORY

The words “two hundred and fifty” were substituted for the word “fifty” by Assam Act VIII of 1954.

The tax payable by any person under the Act is calculated with reference to his income during the previous year from his profession, trade, calling or employment.

The term ‘gross income’ has not been defined anywhere in the Act but the term “total gross income”, has been defined in section 2(f) to mean aggregate of income derived from all sources. The term “gross income” therefore denotes “total gross income” and cannot be interpreted to mean gross profit and tax cannot be levied with reference to the gross profit of a person.

The schedule prescribing the rate of tax prescribes the rate of tax in relation to the total gross annual income of a person.

Earlier there was a provision in section 7 of the Act by which a person willing to pay tax on the basis of his assessment under the Indian Income Tax Act, on production of satisfactory evidence regarding the amount on which he had been assessed, was not required to file return under this Act and tax was levied on the basis of such assessment made under the Income

tax Act. This provision exempting a person from filing a return was however deleted in the year 1959. This makes it abundantly clear that the term "gross income" has not been used to denote "gross profit". It simply means the aggregate of income derived from all sources. The absence of the word "total", with the term "gross income" cannot give it a wider meaning. The tax payable under this Act has to be determined with reference to the "total gross income" of a person.

The income derived by a person from his profession, trade, calling or employment can only be taken into account in determining his total gross income for the purpose of calculating tax. If income is not derived from any of these activities, no tax can be levied on such income.

The fact that the tax relates to income does not affect its validity in view of Article 276(1) of the constitution of India.

1 [5A. The provisions of this Act shall not apply to a member of the armed forces of India] [and to a co-operative society registered or deemed to have been registered under the Assam co-operative Societies Act, 1949.]²

LEGISLATIVE HISTORY

1. Inserted by the Assam Act XXII of 1950 which came into effect from the date of the commencement of Assam Act VI of 1947.
2. Inserted by Assam Act VIII of 1954.

Section 5A exempts the following classes of persons from payment of tax under this Act—

- (1) Members of the armed forces of India.
- (2) Co-operative societies registered under the Assam Co-operative Societies Act, 1949. or deemed to have been registered under the said Act.

CHAPTER II

TAXING AUTHORITIES

6. **Taxing authorities.**—(1) There shall be the following classes of Tax authorities for the purposes of this Act, namely :—
- (a) Commissioner of Taxes.
 - (b) Deputy Commissioner of Taxes,
 - (c) Assistant Commissioner of Taxes (Appeals).
 - (d) Assistant Commissioner of Taxes.
 - (e) Superintendent of Taxes.
 - (f) All-Assam Investigation Officer.
 - (g) Inspector of Taxes.
- (2) The State Government may appoint one Commissioner of Taxes and as many Deputy Commissioners of Taxes, Assistant Commissioners of Taxes (Appeals), Assistant Commissioners of Taxes, Superintendents of Taxes, All-Assam Investigation Officers and Inspectors of Taxes as it thinks fit.
- ✓ (3) The Commissioner of Taxes shall perform his functions in respect of whole of the State of Assam and the Deputy Commissioners of Taxes, Assistant Commissioners of Taxes, Superintendents of Taxes, All-Assam Investigation Officers and Inspectors of Taxes shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income or of such cases or classes of cases as the Commissioner of Taxes may by notification in the official Gazette direct.

LEGISLATIVE HISTORY

1. Section 6 originally read as follows :
6. **TAXING AUTHORITIES.**—For carrying out the purposes of this Act, the Provincial Government may appoint such officers, including assessing authorities, as may be deemed necessary, and the duties and powers of the officers so appointed and their relation to one another shall be such as may be prescribed.
- It was substituted by Assam Act XIII of 1952 by the following :—

6. **TAXING AUTHORITIES**—The Commissioner, Assistant Commissioner, Superintendents, Inspectors and Sub-Inspectors or any other officer appointed under the Assam Sales Tax Act, 1947, shall be the Commissioner, Assistant Commissioner, Superintendents, Inspectors and Sub-Inspectors or such other officer respectively for carrying out the purposes of this Act, and their powers and duties and relation with one another shall be such as may be prescribed.

It was again substituted by Assam Act XII of 1959 by the following :—

6. **TAXING AUTHORITIES**.—The Commissioner, Deputy Commissioner, Assistant Commissioners, Superintendents and Inspectors or any other officers appointed under the Assam Sales Tax Act, 1947 (Assam Act XVII of 1947), shall be the Commissioners, Deputy Commissioner, Assistant Commissioners, Superintendents and Inspectors or such other officer respectively for carrying out the purposes of this Act, and their powers and duties and relation with one another shall be such as may be prescribed.

It was substituted by the present section by Assam Act XXX of 1972 with effect from 13. 12. 1972.

Section 6 deals with the various Taxing authorities under the Act. There are seven authorities as mentioned in sub-section (1). Sub-section (2) empowers the State Government to appoint one Commissioner of Taxes and such number of other authorities as it may think fit. Under sub-section (3) the Commissioner of Taxes has been vested with jurisdiction over the whole of the State whereas in regard to other authorities the power has been given to the Commissioner to define their jurisdiction. Such other authorities shall perform their functions in respect of such areas or of such persons or classes of persons or such incomes or classes of income or such cases or classes of cases as the Commissioner of Taxes may, by notification in the official Gazette, direct.

The scheme of section 6, in its present form as substituted by Assam Act XXX of 1972, is different from the substituted section 6. The old section 6 declared that the Commissioner, Deputy Commissioner etc. appointed under the Assam Sales Tax Act, 1947 shall be Commissioner, Deputy Commissioner etc. under this Act. But the new section provides for appointment of one Commissioner of Taxes and as many other officers as the State Government thinks fit. As a result, after the date of commencement of the new section 6, the officers appointed under the Assam Sales Tax Act ceased to be officers under this Act unless they are appointed by the State Government, as such, under sub-section (2) of section 6. No appointment seems to have been made by the State Government in terms of section 6(2) of Act. That being the position, all actions taken by officers appointed under the Assam Sales Tax Act, 1947 purporting to be officers under this Act, may be illegal and without jurisdiction. There does not seem to be validly appointed authorities having powers to administer the Act.

The powers and duties of the various authorities have been specified in the Act and the Rules.

Jurisdiction—The jurisdiction of the Commissioner of Taxes extends to the whole of the State. The other authorities under the Act perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income or of such cases or classes of cases as the Commissioner may, by notification in the official Gazette, direct.

Commissioner of Taxes—The Commissioner of Taxes is the highest authority under the Act. He exercises such powers and performs such duties as is required of him by the Act or the rules made thereunder. He is responsible for the administration of the Act. (Rule 4)

Under section 10A, the Commissioner of Taxes has the power of revision, both *suo moto* and on petition by the assessee. He can *suo moto* revise orders passed by officers subordinate to him if he finds that the order is erroneous in so far as it is prejudicial to the interests of the revenue. This power is in the nature of supervisory jurisdiction.

Deputy Commissioner—The Deputy Commissioner shall exercise such powers and perform such duties as may be required of him by the Act or the rules made thereunder. The Commissioner may also delegate his powers including power of revision under section 10A to the Deputy Commissioner. (Rule 5)

Assistant Commissioner of Taxes (Appeals)—The function of the Assistant Commissioner of Taxes (Appeals) is to hear appeals under section 10 of the Act.

Assistant Commissioner—The Assistant Commissioner shall exercise such powers and perform such duties as may be required of him by the Act or the rules made thereunder.

Superintendent—A Superintendent shall, besides exercising such powers and performing such duties as may be required of him by the Act or the rules made thereunder exercises the powers of the assessing authority. Superintendent includes an Additional Superintendent or a Special Superintendent appointed under the Assam Sales Tax Act, 1947. (Rule 8). This however, does not appear to be in consonance with the provisions of section 6.

Inspectors—Inspectors shall exercise such powers and perform such duties as may be specified by the Commissioner. (Rule 7)

CHAPTER III

ASSESSMENT

7. **Returns**—(1) Every person liable to pay tax under this Act shall submit to the assessing authority a return in such form and within such time as may be prescribed :

Provided that a person in respect of whom the tax has been deducted under the provisions of section 9 shall, subject to the provisions in sub-section (3) thereof, be exempt from the liability to submit a return under this sub-section.

(2) In the case of any person who has not furnished a return under sub-section (1) in spite of his liability to pay tax under this Act for any financial year, the assessing authority may serve in that year a notice, in the prescribed form, on such person requiring him to furnish the return ; and such person shall thereupon furnish the return within the period specified in the notice :

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Provided*² that any person offering to pay tax at the highest rate specified in the Schedule shall not be required to submit any return or to produce any evidence.

LEGISLATIVE HISTORY

1. The first proviso to sub-section(2) was deleted by section 3 of Assam Act XII of 1959. The proviso read :
“Provided always that a person who is willing to pay tax on the basis of his assessment under the Indian Income-tax Act and who produces satisfactory evidence regarding the amount on which he has been assessed will not be required to file a return and the tax will be levied on the basis of the such assessment.”
2. In the second proviso the word ‘also’ was deleted by Assam Act XII of 1959.

Voluntary Return—Under this section every person liable to pay tax under this Act is bound to submit return in the prescribed form and within the prescribed time. The return is to be submitted to the Assessing authority. The Superintendent of Taxes of the area having jurisdiction over the assessee is the assessing authority. Rule 10 prescribes the time for submission of voluntary returns. It provides that the return required to be furnished under section 7 should be furnished within sixty days of the commencement of the financial year.

Persons in respect of whom tax has been deducted at source under the provisions of section 9 are exempted from the liability to submit voluntary return, but if the assessing authority is satisfied that no return under sub-section (2) of section 9 has been submitted by the Principal officer making any deduction at source or the return furnished by the Principal Officer in respect of such person is inaccurate or deficient, the assessing authority may require such person, by issuing a notice under sub-section (2), to submit the return, and in that event, such person shall be bound to submit the return.

Notice for submission of return.—In the case of any person who has not furnished a return under sub-section (1) in spite of his liability to pay tax under this Act for any financial year, the assessing authority may serve a notice on such assessee requiring him to furnish the return in the prescribed form within the period specified in the notice [sub-section (2)]. The notice may be issued at any time within the financial year. On receipt of such a notice, such person is obliged to submit the return within the time specified in the notice.

A person is not required to submit the return if he offers to pay tax at the highest rate specified in the schedule.

Payment of tax.—The tax due on the basis of the return must be paid into the Government treasury before furnishing of the return and a receipt from the treasury in token of such payment should be furnished along with the return. [Section 12(2)].

8. Assessment. (1)—If the assessing authority is satisfied that a return furnished under section 7 is correct and complete ^{*1} he shall, by an order in writing, assess the person and determine the tax payable by him on the basis of such return. ^{*1}

(2) If the assessing authority is not satisfied that return furnished under section 7 is correct and complete he shall serve on the person concerned a notice requiring him, on the date, and at the hour and place to be specified therein either to attend in person or to produce or cause to be produced evidence in support of the return.

(3) On the days specified in the notice under sub-section (2) or as soon afterward as may be, the assessing authority, after hearing such evidence as may be produced and other evidence as he may require, shall, by an order in writing, assess the person and determine the tax payable by him.

(4) If any person fails to make a return as required by section 7 or having made the return fails to comply with the terms of the notice issued under sub-section (2), the assessing authority shall, by an order in writing, assess to the best of his judgment the person and determine the tax payable by him.

[Provided that before making assessment, the assessing authority may allow the person such further time as he thinks fit to make the return or comply with the terms of notice issued under sub-section (2)]³.

LEGISLATIVE HISTORY

1. In sub-section (1) of section 8 the words "or satisfactory evidence of assessment under the Indian Income-tax Act is produced and "or on the basis of such assessment as the case may be" were deleted by Assam Act XII of 1959.

2. The proviso to sub-section (4) of section 8 was inserted by Assam Act XIII of 1952.

Assessing Authority.—The assessing authority under the Act is the Superintendent of Taxes.

Assessment is made and the tax payable determined under this section. Assessment may be made :

- (i) on the basis of the return ;
- (ii) on the basis of the evidence adduced ; or
- (iii) to the best of the Assessing authority's judgment.

Assessing Authority.—The Assessing authority under the Act is the Superintendent of Taxes.

Assessment on the basis of return.—If the assessing authority is satisfied that a return is correct and complete he may make the assessment on the basis of such return.

Assessment on the basis of evidence adduced.—If the assessing authority is not satisfied that the return furnished under section 7 is correct and complete, he is bound to serve a notice under sub-section(2) on the person concerned requiring him on a specified date either to attend in person or to produce or cause to be produced evidence in support of the return.

The choice as to whether the assessee should attend the assessing authority's office or whether he should produce or cause to be produced evidence in support of his return lies with the assessee and not with the department. A notice under this sub-section which merely calls upon the assessee to attend the assessing authority's office and does not give him choice of producing or causing to be produced any evidence on which he may rely in support of the return is therefore invalid (*Rajmani Devi vs. C.I.T. 1937 ITR 631*).

After the assessee complies with the notice under sub-section(2) and produces evidence, the assessing authority may assess the person and determine the tax payable by him after hearing such evidence as may be produced and such other evidence as he may require.

Best Judgment assessment. Sub-section (4) deals with the powers of the assessing authority to make a best judgment assessment. The terms of this sub-section are mandatory and the assessing authority has no discretion to make or not to make any assessment under this sub-section.

Two contingencies have been laid down under which the best Judgment assessment can be made. These contingencies are—

- (i) where an assessee fails to make a return required by section 7 ; or
- (ii) where having made the return, an assessee fails to comply with the terms of the notice issued under sub-section (2) of section 8.

The contingencies mentioned above are alternative and not cumulative. Default in compliance with any one of the requirements referred to in this sub-section would entail a best judgment assessment under this sub-section. [*C. I. T. V. Segu Buchiah Setty* (1970), 77 ITR 539, 542 S. C.]

The jurisdiction of the assessing authority to make a best judgment assessment under this sub-section is a limited jurisdiction dependent upon the existence of certain collateral facts, viz., the non-compliance by an assessee of the requirements mentioned in this sub-section. Before the assessing authority can assume jurisdiction under this sub-section, he must record the finding in the first instance that there was non-submission of return under section 7 or non-compliance with a notice under sub-section (2) of section 8 of this Act. On a challenge being thrown, the superior authority or the court could then examine whether or not the non compliance exists, and if it does not exist, then give relief by quashing the assessment order passed under section 8 (4) of the Act.

A simple failure or omission to file a return under the provision of section 7 (1) will not entitle the assessing authority to make an *ex parte* best judgment assessment under section 8 (4) of the Act. Such an assessment can only be made if a valid notice under section 7 (2) requiring the assessee to furnish a return has been served and the assessee has failed to furnish a return within the time thereby limited. [See *State of Assam V. D. C. Choudhury* (1970) 76 I. T. R. 706 (S. C.) : *Seo Prasad Barua V. Ag. I. T. O.* (1972) Tax L. R. 1211 (Gauhati) ; *Supdt. of Taxes V. Onkar al Nathmal Trust* (1975) Tax L. R. 2020 (S. C.) : A. I. R. 1975 S. C. 2065]

Nature of best judgment assessment.—The difference between an assessment under sub-section (3) and assessment under sub-section (4) is that

sub-section (4) contemplates a summary method when the assessing officer is acting under this sub-section by reason of a deliberate default of the assessee [*Gunda Subbaya v. C. I. T.* (1939) 7 I. T. R. 21, 27 (Mad.)]

The assessing officer is to make the assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly or inactively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure. Though there must necessarily be guess work it must be honest guess work. In that sense too, the assessment must be to some extent, arbitrary. The language of the Act does not justify the laying down of rules imposing upon the officer the duty of conducting some kind of local inquiry before making the assessment under this section and recording a note of the details and result of such inquiry, as there is no justification for holding that an assessment made by an officer under this section without conducting a local enquiry cannot have been made to the best of the judgment within the meaning of the section. [*Commissioner of I. T. v. Luxminarain Badridas* (1937) 5 I. T. R. 170 (P.C.) *State of Kerala v. Velukutti* (1966) 61 I. T. R. 239 (S. C.)]

Where no return is submitted by an assessee, the assessment has to be made by the officer to the best of his judgment and in making such an assessment, there must necessarily be guess work, which must be honest guess work. Such an assessment has to be made upon inadequate materials and the assessing officer alone has to determine the amount of assessment and the sum payable. It is a pure question of fact of which the officer has been made the sole judge. He is compelled to draw inferences and to consider materials which would not be justified by the Evidence Act. [*Great India Rice and Oil Mills v. State of Bihar* (1957) 8 S. T. C. 341 (Pat)] But that does not authorise the officer to make assessment capriciously or without any regard to the available material. An assessment made under this section is assessment to the best of his judgment and the word, "judgment" implies and estimates a fair and reasonable consideration of the material which is available to the taxing officer. [*C. I. T. v. Luxminarayan Badridas* (1937) 5 I. T. R. 170 (P. C.) referred to in *Bhimraj Nagarmal v. State of Bihar* (1954) 5 S. T. C. 312 (Pat)]

The assessing officer should not be influenced by a desire to punish the assessee for the default which attracts the operation of this section, however culpable such default might be. [*Jot Ram Sher Singh v. C. I. T.* (1934) 2 I. T. R. 129 (All.)]. *Ex-hypothesi* an assessment under this section must be made upon inadequate materials. [*Abdul Baree Chowdhury v. C. I. T.* 5 I. T. C. 352 (Rang) approved in *C. I. T. v. Laxminarain Badridas* (1937)

5 I. T. R. 170 (P. C.) ; *Macpherson & Co. v. Moore* 6 T. C. 107.] But that does not mean that the assessing officer can make the assessment capriciously or without regard to any available material at all. [*Gunda Subbayya v. C. I. T.*, (1939) 7 I. T. R. 21,26 (Mad.) ; *Muhamma Hayat v. C.I.T.* 5 I.T.C. 159, 171 ; *Abdul Qayum & Co. v. C.I.T.* (1933) 1 I.T.R. 375] The assessment must be "to the best of his judgment" ; and the word "judgment" itself implies consideration of something ; here it must be consideration of the facts relating to the income of the assessee. [See per Leach, *C. J. Gunda Subbayya v. C. I. T.* (1939) 7 I. T. R. 21, 26 (Mad.) ; See also *Chetandas Gulabchand v. C. I. T.* (1963) 49 I. T. R. 951 (Pat.)]

The law is fairly established that in a taxing statute where the officer has got materials before him on which he could rely he is entitled to draw inferences from those materials and unless it can be shown that there is absolutely absence of evidence or materials on record to justify the assessment it is not possible to hold on the mere assertion that the circumstances are not adequate to come to that finding, that the assessment is bad in law.

An assessment on best judgment basis is not an arbitrary assessment. The provisions of this sub-section impose on the assessing authority a duty to assess the tax after leading such evidence as the assessing authority may require on specified points. In making an assessment under this section the officer is not fettered by technical rules of evidence and pleadings and he is entitled to act on material which may not be accepted as evidence in a court of law ; but he is not entitled to make a pure guess and make an assessment without reference to any material or evidence at all. There must be something more than bare suspicion to support the assessment. When the returns and the books of account are rejected, the assessing officer must make an estimate and to that extent he must make a guess ; but the estimate must be related to some evidence or material and it must be something more than mere suspicion. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he must take into consideration such materials as the assessing officer has before him, including the assessee's circumstances, knowledge of previous returns and all other matters which the assessing officer thinks, will assist him in arriving at fair and proper estimate. [*Raghubar Mandal Harihar Mandal v. The State of Bihar* (1957) 8 S. T. C. 770 (S. C.) ; *Dhakeswari Cotton Mills Ltd. v. C. I. T. West Bengal* (1955) 26 I. T. R. 775 (S. C.)] The mere fact of errors in the assessee's accounts is not a sufficient ground to enhance assessment on best judgment in the absence of material showing mal-practices. [*Commissioner of Sales Tax M. P. v Sardar House* (1969) 23 S. T. C. 276 (M. P.)] The assessing authority is authorised to make best judgment

assessment where the assessee has not complied with the terms of the requirements provided in section 8 (2). But this does not give the assessing authority unbridled authority to assess. He must make what he believes to be the fair estimate of assessment and for this purpose he must be able to take into consideration local knowledge, reputation and circumstances of the assessee and his own knowledge of the previous returns and assessments, if possible. (*A. I. R. 1959 Cal. 154*)

The limits of the power of the assessing authority under this sub-section are implicit in the expression "best of his judgment". Judgment is a faculty to decide matters with wisdom, truly and legally. Judgment does not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guess-work in a best judgment assessment, it shall not be a wild one but shall have a reasonable nexus to the available material and the circumstances of each case. Though sub-section (4) of section 8 of the Act provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard for the available material.

[*The State of Kerala v. Velukutty* (1966) 17 S. T. C. 465 (S. C.), following *C. I. T. v Laxminarayan Bdridas* (1937) 5 I. T. R. 170 (P. C.) ; *Chowthmal Agarwalla v. C. I. T.* (1962) 46 I. T. R. 262 (Assam)]

8A. Assessment of Escaped Tax.—If for any reason any person has not been assessed or has been under-assessed for any financial year the assessing authority may, notwithstanding anything contained in sub-section (2) of section 7, at any time within three years of the end of that year, serve on the person liable to pay the tax, a notice containing all or any of the requirement which may be included in a notice under sub-section (2) of section 7 and may proceed to assess or reassess him and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which he would have been charged if the person would not have escaped assessment or full assessment, as the case may be.

LEGISLATIVE HISTORY

Section 8A was inserted by Assam Act XIII of 1952.

Section 8A applies to cases where any person has not been assessed or has been under assessed for any financial year.

If for any reason any person has not been assessed or has been under-assessed for any financial year the assessing authority may serve a notice on the person liable to pay tax and may proceed to assess or reassess him.

Limitation.—Notice under this section can be issued at any time within three years of the end of the year for which the assessment or reassessment is proposed to be made.

Notice.—Service of notice is a condition precedent for the exercise of jurisdiction of the assessing officer to assess or reassess a person under this section. No form of notice has been prescribed. The notice must contain all or any of the requirements which may be included in a notice under sub-section (2) of section 7.

Service of Notice.—The notice must be served on assessee within the period of three years from the end of the financial year in question. The service of notice within the requisite time is a *sine-qua-non* and failure to serve it within the time fixed would deprive the assessing authority of his jurisdiction to assess. A mere issue of notice within the period is not enough. It should also be served on the assessee within the period of limitation. [*Sri Niwas & others v. I.T.O* AIR 1956 All. 657 : (1956) 30 ITR 381 ; *C.I.T., Bombay South v. D.V. Churve* AIR 1958 Bom. 139 : (1957) 31 I.T.R. 683]

Upon the service of a valid notice all further steps shall have to confirm to the procedure in respect of a normal assessment following upon a notice issued under section 7(2) of the Act.

No time limit for completing assessment.—This section provides that where a person has escaped assessment or has been under-assessed in any particular year, the proceedings to assess or reassess such person would have to be started within three years in question. There is nothing in the Act which requires the proceedings started under this section to be completed within any particular time. Similarly there is no provision prescribing time limit for completion of original assessment proceedings started by submission of return under section 7(1) or by service of notice under section 7(2). The Act prescribes time limit for commencement of proceedings either assessment or re-assessment, but it fails to fix any time limit at all for concluding the proceedings once they have been so initiated.

Rate of Tax.—The proviso to section 8A lays down that when an assessment is made under this section, the tax shall be charged at the rate at which it would have been charged if he would have been assessed in the year in which the escapement took place.

8B. Rectification of mistakes. (1) The authority which made an assessment or passed an order on appeal or revision in respect therefore, may of his own motion, and shall if an application is filed in this behalf, within three years from the date of such assessment or order rectify any mistake apparent from the record of the case.

Provided that no such rectification having adverse effect upon an assessee shall be made unless the assessee has been given a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of reducing the assessment, the assessing authority shall order any refund which may be due to such person.

(3) Where any such rectification has the effect of enhancing the assessment or reducing the refund, the assessing authority shall serve on the person a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 11 and the provisions of this Act shall apply accordingly.

LEGISLATIVE HISTORY

Section 8B was inserted by Assam Act XIII of 1952.

This section has limited application. It enables rectification to be made of any mistake apparent from the record, by the authority which made an assessment or passed an order in appeal or revision in respect thereof either on its own motion or when such mistake is brought to the notice of that authority by the party to the proceedings.

Authority competent to rectify mistakes.—One authority cannot proceed to rectify the mistake in the order of any other or others [*Abdul Rahiman Sait v. I. T. O.* (1958) 33 I. T. R. 106 (Ker)]. But an officer who takes up a particular assessment has power of rectifying the mistake apparent from the record committed by his predecessor in an order [(*Sushil Ch. Ghose v. I.T.O.* (1959) 35 I. T. R. 379 (Cal.)). Even after an appeal from an order has been preferred and decided, a mistake in that part of the order which was not the subject matter of the appeal and was left untouched by the appellate authority, can be rectified. [*Central Indian Insurance Co. Ltd. v. I. T. O.* (1963) 47 I. T. R. 895 (M. P.) ; *Kalluram Tirasilal v. I. T. O.* (1966) 59 I. T. R. 308 (M. P.)]. Action under this section can be taken more than once to rectify different mistakes. [*Hira Lal Sutwala v. C. I. T.* (1965) 56 I. T. R. 339 (All.)].

Error of fact or law.—There is nothing in this section to suggest that the error contemplated by this section must necessarily be an error of fact, it can be an error of law. An obvious mistake of law can be rectified under this section as much as a mistake of fact apparent from record. [*I. T. O. v. Bombay Dying and Manufacturing Co. Ltd.* (1958) 34 I. T. R. 143 (S. C.)].

Mistake apparent from record.—The jurisdiction of the authority under this section is to rectify the mistake apparent from the records and is not restricted to mistakes which are clearly clerical or arithmetical (*Ibid*). It must, however, be mistake apparent from the record. In other words, it must be a mistake which must be patent on the face of the record and does not call for detailed investigation of the facts or law or require an elaborate argument to establish it. [*Laxminarayan Gauri Shankar v. State of U. P.* (1969) 24 S.T.C. 77 (All.)]. It does not cover any mistake which may be discovered by complicated process of investigation, argument or proof. [*Maharana Mills v. I.T.O.* (1959) 36 I.T.R. 350 (S.C.)]. The mistake sought to be rectified must be manifest and self-evident on the face of the record. The error may be one of fact or law, but it must be one which is apparent and not lurking, which is visible and not dormant, which can be seen and not hidden. It cannot be demonstrated to exist by relying upon materials outside the record. [*C. B. B. Thandava Rao v. State of Madras* (1964) 15 S.T.C. 22 (Mad.)]. Rectification under this section must be of a mistake which is a mistake in the light of law in force at the time when the order sought to be rectified was passed. [*State of Bombay v. Pandurang Vinayak Chappalkar* 1953 S.C.R. 773, 778]. Where an assessment was made on the fact of a law which has been declared to be invalid and unconstitutional, there is an error apparent on the face of the record. In such cases, an assessee can take advantage of the provision for rectification in the same way as he may take advantage for preferring an appeal against his order, provided the circumstances are such that the assessee can bring the case within the four corners of the provision for rectification. A glaring and obvious mistake of law can be corrected under this section. [*Venkatachalam v. Bombay Dying & Mfg. Co. Ltd.* (1958) 34 I.T.R. 143, 150 (S.C.) ; *Central Indian Ins. Co. Ltd. v. I.T.O.* (1963) 47 I.T.R. 895 (M.P.) ; *Kalooram Tirasilal v. I.T.O.* (1966) 59 I.T.R. 308 (M.P.)]. For instance, the levy of tax under a statutory provision which is subsequently held by the Supreme Court to be inoperative and ineffective [*Narayan Row v. Model Mills Nagpur Ltd.* (1967) 64 I.T.R. 67 (S.C.) ; *Walchand Nagpur Industries Ltd. v. Gaitonde* (1962) 44 I.T.R. 260 (Bom.) See *I.T.O. v. Ashok Textiles Ltd.* (1961) 41 I.T.R. 732 (S.C.) ; *C.I.T. v. Khatau Makanji Spg. & Wvg. Co. Ltd.* (1960) 40 I.T.R.

189 (S.C.)] or action under a rule which is ultra vires [*C.I.T. v. Harnandrai Shrikishan Akodia* (1966) 61 I.T.R. 50 (M.P.)] is a mistake apparent from the record. A decision on a debatable point of law or failure to apply the law to a set of facts which remain to be investigated cannot be corrected by way of rectification. [*Volkart Brothers v. I.T.O.* (1971) 82 I.T.R. 50 (S.C.) ; *National Rayon Corpn. Ltd. v. Bahmani* (1965) 56 I.T.R. 114 (Bom.) ; *Arvind Mafatlal v. Balakrishnan* (1968) 67 I.T.R. 449 (Bom.) ; *Burmah-Shell Refineries Ltd. v. Chand* (1968) 67 I.T.R. 653 (Bom.) ; *Parameswaran Pillai v. I.T.O.* (1955) 28 I.T.R. 885 ; *Janardhanan Pillai v. I.T.O.* (1958) 33 I.T.R. 111 (Ker.) ; *Subbaraja Mudaliar v. C.I.T.* (1968) 33 I.T.R. 228 (Mad.) See also *Ramniklal Tribhowandas v. Amin* (1961) 42 I.T.R. 92 (Bom.) and *Rajam v. Contr. E. D.* (1968) 69 I.T.R. 302 (Mad.)].

The jurisdiction of the authority under section 20 is confined to rectification of a mistake apparent from the record. This section does not envisage rectification of an order or judgment. The mistake must be a mistake which will appear upon at a glance on the record and not a mistake which emerges after prolonged debate on the merits of the question. (1969) 24 S.T.C. 48 (All.).]

Records—meaning of.—It can be assumed that the record comprises the entire assessment proceedings including the evidence adduced. [*C. B. B. Thandava Rao v. State of Madras* (1964) 15 S.T.C. 22 (Mad.)]. Rectification may be made under this section not only of mistake in a final order but also in any part of the record or proceedings in the case. [*Arvind N. Mafatlal v. I.T.O.* (1957) 32 I.T.R. 330 (Bom.)]. The “record” contemplated by this section does not mean only the order of assessment but it comprises all proceedings on which the assessment order is based. (*Ibid*). It is open to the officer to examine the record including the evidence and if he discovers any mistake, he is entitled to rectify the error. [*Maharana Mills v. I. T. O.* (1959) 36 I.T.R. 350 (S.C.) ; *I. T. O. v. Ashok Textiles Ltd.* (1961) 41 I.T.R. 732 (S.C.)].

Opportunity of being heard.—Proviso to sub-section(1) of this section lays down that before an order of rectification is made which enhances the assessment the assessee must be given a reasonable opportunity of being heard. The object of the provision as to opportunity of hearing is that no order should be passed to the detriment of an assessee without affording him an opportunity but the rule is not so rigid that if, as a matter of fact, the assess knows of the proceedings and the matter has been discussed with him then an adverse order would not be invalid merely because no notice was given. Of course this postulates that a reasonable opportunity has been given to show cause. The provision requiring that notice should be

given to the assessee is applicable only where the assessment is enhanced or refund is reduced

Notice of demand on enhancement of tax.—If the order of rectification has the effect of enhancing the assessment the assessee must be served with a notice of demand.

If the order of rectification has resulted in reducing the assessment, no fresh notice of demand need be served on the assessee. [*Municipal Board, Agra v.C.I.T.* (1951) 19 *I.T.R.* 63(*All.*)] If any excess tax has already been paid it must be refunded to the assessee.

Limitation.—The period of limitation for rectification under this section is three years from the date of assessment or order.

9. Deduction of tax at source. (1) The tax payable under this Act by any person in the employment of any Government, local authority company, firm or other association of persons, shall, in the manner prescribed, be deducted by the principal officer thereon from any amount payable to such person on behalf of such Government, local authority, company, firm or other association of persons.

(2) The principal officer making any deduction under sub-section (1) shall submit to the assessing authority such returns and within such time as may be prescribed.

(3) The assessing authority may take action, if he thinks fit in the manner provided by sub-section (2) of section 7 and by section 8, in the case of any person in respect of whom he is satisfied that [no return under sub-section (2) has been furnished or a return furnished under that sub-section]¹ is inaccurate or deficient.

[(4) Where any principal officer fails to deduct any tax or after deducting fails to pay it as required by or under this Act, he shall, without prejudice to any other consequences he may incur under this Act, be deemed to be a person in default in respect of the tax not deducted or paid and all the provisions of section 13 shall apply to him :

Provided that the assessing authority shall not make a direction under sub-section (2) of section 13 for the recovery of any penalty from such person unless it is satisfied that such person has wilfully failed to deduct and pay the tax.]²

[9A. Requisition for deduction of tax:—The assessing authority may require a principal officer to deduct, from any payment to a person, any tax or penalty due from him and the principal officer shall comply with such requisition.]³

[9B. Indemnity.—The principal officer deducting or paying any tax under the provisions of this Act is hereby indemnified for such deduction or payment thereof.]³

LEGISLATIVE HISTORY

1. In sub-section(3) of section 9, the words and figures "no return under sub-section(2) has been furnished or a return furnished under that sub-section" were substituted for the words and figures "a return furnished under sub-section(2)" by Assam Act XIII of 1952.

2. Sub-section(4) was inserted by Assam Act XIII of 1952.

3. Sections 9A & 9B were inserted by Assam Act XIII of 1952.

Section 9 casts a duty on the principal officer to deduct the tax payable under this Act by any person in its employment from the amount payable to such person.

The manner of deduction is laid down in Rule 14 of the Rules framed under the Act which provides that the deduction at source should be made in one instalment. Power has, however, been given to the Commissioner or Deputy Commissioner to authorise the principal officer in certain cases to make deduction of tax at source in more than one instalment.

The principal officer should make the deduction in one instalment within sixty days of the commencement of each financial year. In cases where deduction in instalments has been allowed by the Commissioner or the Deputy Commissioner, the deduction should be made on such dates on which the instalments fall due [Rule 15].

The liability of the principal officer to deduct tax is absolute and is not effected by any private arrangement whereby the employee has undertaken to discharge his own tax liability. [*John Patterson & Co. (India) Ltd. v. I. T. O. (1959) 36 I.T.R. 449*].

Return by the Principal Officer.—The principal officer making any deduction under sub-section (1) of this section is obliged to submit return to the assessing authority [sub-section 2]. Such return has to be in form IV and must be submitted to the Superintendent within 30 days of the completion of the period referred to in rule 10 [Rule 16].

The tax deducted at source should be deposited in the Government treasury within thirty days of such deduction and the challan in token of such payment should be furnished along with the return [section 12(3)].

Notice to the principal officer to submit return etc. (Sub-Section 3).—The assessing authority may take action against the principal officer in the manner provided by sub-section (2) of section 7 and by section 8 if he is satisfied—

- (1) that no return under sub-section (2) has been furnished, or
- (2) a return furnished under that sub-section is inaccurate or deficient.

Action on failure of the principal officer to deduct any tax etc.—If the principal officer—

- (1) fails to deduct any tax, or
- (2) after deducting, fails to pay it as required by, or under this Act, he shall be deemed to be a person in default in respect of tax not deducted or paid and all the provisions of section 13 in respect of recovery shall apply to him.

The defaulting principal officer shall also be liable to any other consequences he may incur under the Act.

However, the provision to sub-section (4) lays down that no penalty shall be recovered under section 13(2) from such person unless the assessing authority is satisfied that such person has wilfully failed to deduct and pay the tax.

Requisition for deduction of tax.—Where any tax or penalty is due from any person in employment, the assessing authority may recover the same by requiring the principal officer to deduct the same from any payment to such person. On receipt of such requisition, the principal officer shall be bound to comply with the same.

Indemnity.—Section 9B affords indemnity to the principal officer for deduction or payment of tax made under the provisions of this Act.

CHAPTER IV

APPEALS

10. Appeals.—(1) Any person aggrieved by an order passed under this Act by an assessing authority not being an order passed under this section, may appeal to the Assistant Commissioner of Taxes (Appeals), against such order within thirty days from the date of service of such order in the manner prescribed :

Provided that no appeal against an order of an assessment or penalty shall be entertained by the Assistant Commissioner of

Taxes (Appeals) unless he is satisfied that the amount of tax assessed or penalty imposed, if not otherwise directed by him, has been paid :

Provided further that the Assistant Commissioner of Taxes (Appeals), before whom the appeal is filed, may admit it after expiration of thirty days, if he is satisfied that for reasons beyond the control of the appellant or any other sufficient cause it could not be filed within the specified time.

(2) The Assistant Commissioner of Taxes (Appeals) shall fix a day and place for hearing the appeal, and may from time to time adjourn the hearing and make such further enquiry as he thinks fit.

(3) In disposing of the appeal under sub-section (1) against an order of assessment or penalty, the Assistant Commissioner of Taxes (Appeals) may,

- (a) confirm, reduce, enhance or annul the assessment ;
- (b) set aside the assessment and direct a fresh assessment after such enquiry as may be ordered ; or
- (c) confirm, reduce or annul the order of penalty.

LEGISLATIVE HISTORY

Section 10 underwent a number of amendments. Originally it read as follows :

10. Appeals.—Any person aggrieved by any order passed under this Act may, within thirty days of its receipt by him, appeal to the prescribed authority who may pass such order as may be deemed fit :

Provided that no appeal shall lie against an order of assessment under sub-section (4) of section 8.

It was substituted by Assam Act XIII of 1952 by the following :—

10. Appeal.—Any person aggrieved by an order passed by an assessing authority under this Act may in the prescribed manner appeal, within thirty days of receipt of such order to the Assistant Commissioner :

Provided that the Assistant Commissioner may admit it after the expiration of thirty days, if he is satisfied that for reasons beyond the control of the appellant or for any other sufficient cause it could not be filed within time :

Provided further that no appeal shall lie against an order of assessment under sub-section (4) of section 8.

By Assam Act XVII of 1971, it was again substituted by the following with effect from 1. 8. 1971 :—

10. (1) Any assessee objecting to an order passed under this Act by any officer other than the Commissioner or the Assistant Commissioner mentioned in section 6 of this Act, may, within thirty days from the date of service of such order appeal to the Assistant Commissioner against such order in the manner prescribed :

Provided that no appeal against an order of assessment or penalty shall be entertained by the Assistant Commissioner unless he is satisfied that the amount of tax assessed or penalty levied, if not otherwise directed by him, has been paid :

Provided further that the Assistant Commissioner before whom the appeal is filed may admit

it after the expiration of thirty days, if he is satisfied that for reasons beyond the control of the appellant or for any other sufficient cause it could not be filed within time.

(2) Every appeal under sub-section (1) shall be presented in the prescribed form and shall be verified in the prescribed manner.

(3) The Assistant Commissioner shall fix a day and place for hearing of the appeal, and may from time to time adjourn the hearing and made or cause to be made, such further enquiry as may be deemed necessary.

(4) In disposing of the appeal under sub-section (1) against an order of assessment or penalty, the Assistant Commissioner may—

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct a fresh assessment after such inquiry as may be ordered, or

(c) Confirm, reduce or annul the order of penalty.

It was substituted by the present section by Assam Act XXX of 1972 with effect from 13. 12. 1972.

Section 10, as substituted by Assam Act XXX of 1972, provides that appeals shall lie with the Assistant Commissioner of Taxes (Appeals) in place of Assistant Commissioner of Taxes. Section 5 of the said Assam Act XXX of 1972 has also made provision relating to pending appeals. The said section 5 reads :

“5. Provision relating to pending appeals.—Notwithstanding anything contained in any law, as from the date of commencement of the provisions of this Act all appeals pending on the date on which this Act comes into force shall stand transferred to the Assistant Commissioners of Taxes (Appeals) as may be directed in writing by the Commissioner of Taxes, and shall be disposed of by the said Assistant Commissioner of Taxes (Appeals) as if the appeals were preferred before him under section 10.”

Section 10 gives a right of appeal to a person aggrieved by an order passed under this Act.

A right of appeal is not merely a matter of procedure. It is a matter of substantive right. This right of appeal from the decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated in, and before a decision is given by, the inferior court. A pre-existing right of appeal is not destroyed by an amendment if the amendment is not made retrospective by express words or necessary intendment. The fact that the pre-existing right of appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. As the old law continues to exist for the purpose of supporting the pre-existing right to appeal that old law must govern the exercise and enforcement of that right of appeal and there can then be no question of the amended provision preventing the exercise of that right. A provision which is calculated to deprive an assessee of the unfettered right of appeal cannot be regarded as

a mere alteration in procedure. For the purposes of the accrual of the right of appeal the critical and relevant date is the date of initiation of the proceedings and not the decision itself. [*Hoosein Kasam Dada (India) Ltd. v. The State of Madhya Pradesh and others* (1953) 4 S.T.C. 114 (S.C.) ; *K. M. S. Lakshmanier & Sons (P) Ltd. (in voluntary liquidation) v. The Sales Tax Appellate Tribunal, Hyderabad and two others* (1967) 20 S.T.C. 103 (A.P.)].

The right of appeal is a vested right and, such a right to enter the superior court accrues to the litigant and exists as on and from the date the *lis* commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal. This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise. [*Garikapatti Veeraya v. N. Subbiah Choudhury* 1957 S.C.R. 488, 514.]

Appellate Authority.—An appeal under this section lies with the Assistant Commissioner of Taxes (Appeals).

Limitation.—The period of limitation for filing an appeal under this section is thirty days from the date of service of the order appealed against.

The second proviso to section 10 empowers the authority, before whom the appeal is filed, to admit the appeal even after expiration of thirty days, if it is satisfied that for reasons beyond the control of the appellant or any other sufficient cause it could not be filed within the specified time. This power to condone delay is discretionery and the appellate authority will be justified in rejecting the appeal, if in its opinion, there was no sufficient cause for not presenting the appeal within the period of limitation.

In deciding the question whether sufficient cause was shown by the assessee for excusing the delay in filing an appeal, the most relevant factor to be taken into account is whether the party concerned has bonafidely prosecuted some other proceedings because of which delay has occurred in filing the appeal. It may be that, in selecting a particular remedy, the party may have been ill-advised. The test is not whether in law the other remedy prosecuted is legally correct and justifiable. There may, however, be cases where, *ex-facie*, the remedy chosen by the assessee is unjustifiable and may show lack of bonafides. Where there were no circumstances or facts to assume that, when the assessee invoked article 226 of the Constitution and sought the assistance of the High Court to quash the assessment orders, they acted otherwise than bonafide, but they honestly believed that they could

get the relief they wanted in the writ petitions and the delay of about three years in filing the appeals was more due to the time taken by the pendency of the writ petition in the High Court, it was held that the delay in filing the appeals should be condoned. [*J. M. Bhansali and others v. The State of Madras* (1968) 21 S.T.C. 411 (Mad.) ; *Coimbatore Murugan Mills v. Board of Revenue* (1970) 25 S.T.C. 469 (Mad.)].

Changes made in the right of appeal.—Section 10 was substituted first by Assam Act XVII of 1971 with effect from 1.8.1971 and then by Assam Act XXX of 1972 with effect from 13.12.1972.

The following major changes were made by Assam Act XVII of 1971 in the provisions for appeal :—

- (1) Appeal has been provided against any order passed under this Act. Thus under the substituted section appeal lies against order of assessment under sub-section (4) of section 8 also. Earlier appeal was barred against such an order.
- (2) Payment of the amount of tax assessed or penalty levied has been made a condition for admission of the appeal. It has been left to the discretion of the appellate authority to admit it otherwise than on payment.
- (3) The powers of the appellate authority have been specified in the section itself which include power of enhancement of assessment. Earlier, there was no power of enhancement. Rule 23, which specifies the power of the appellate authority, however, includes this power of enhancement. The validity of the said Rule was doubtful. It appears to be beyond the rule-making power vested in the State Government. This power has now been incorporated in the section itself.

By Assam Act XXX of 1972, section 10 was again substituted. The basic features of section 10, as substituted with effect from 1.8.1971, were retained in the new section. But under this section the appellate authority is the Assistant Commissioner of Taxes (Appeals).

Section 5 of Act XXX of 1972 provides that all appeals pending on the date of commencement of the Amendment shall stand transferred to the Assistant Commissioner of Taxes (Appeals).

The amendments aforesaid are prospective and not retrospective. As such, they will apply only to cases where the original proceedings were initiated after the substituted sections came into force. The date of assessment will not be the relevant date.

Appeals fees.—The fees payable on a memorandum of appeal is rupees two.

Form and presentation.—An appeal should be presented in the manner prescribed by Rules 19 to 21 of the Rules. The memorandum of appeal may be presented to the appellate officer by the appellant or by his agent or it may be sent by post.

The memorandum of appeal should contain, amongst others, the following particulars :—

- (a) a statement of the facts of the case ;
- (b) the grounds on which the petition is filed ;
- (c) the date of service of the order appealed against.

Rule 21 provides that the memorandum of appeal should be duly stamped and accompanied by a certified copy of the order appealed against and should be signed, verified and endorsed by the appellant or his agent to the effect that—

- (a) that the tax not in dispute has been deposited ;
- (b) that to the best of his knowledge and belief, the facts set out in the memorandum are true.

Rule 21A provides for summary rejection of an appeal petition where any of the requirements of rule 21 are not complied with.

Rule 21 does not provide for payment of tax assessed or penalties levied. It simply speaks of payment of tax not in dispute.

Summary rejection of an appeal on grounds other than those mentioned in Rule 21 is not contemplated by Rule 21A. The summary rejection on the ground of limitation or on the ground of non-payment of tax assessed or penalty levied without giving a hearing to the appellant is beyond the competence of the appellate authority. [*Nawrangrai Ramniwas v. Commissioner of Taxes 1974 Tax. L. R. 2384 (Gau)*].

Hearing of appeal.—Sub-section (3) of section 10 and Rule 22 provide for fixing a date of hearing of the appeal. Unless an appeal petition is summarily rejected for non-compliance with the requirements of Rule 21, the appellate authority should fix a day and place for hearing of the appeal. The Appellate authority may also make or cause to be made, such further enquiry as may be deemed necessary.

Powers of appellate authority.—Sub-section (3) of section 10 sets out the various powers which can be exercised by the Appellate authority in appeal against different orders. His powers are wider than the powers of an ordinary court of appeal. His competence is not restricted to dealing with the subject matter of appeal. Once an assessment comes before him, his competence is not restricted to examining those aspects of the assessment which are complained of by the assessee but ranges over the whole assessment and it is open to him to correct the assessing authority not only with

regard to a matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the assessing authority and determined in the course of assessment. He can revise every process which led to the ultimate computation or assessment.

The appellate authority has plenary powers in disposing of an appeal. The scope of his powers is conterminous with that of the assessing authority. He can do what the assessing authority could do and can also direct the latter to do what the latter failed to do. [*C. I. T. v. Kanpur Coal Syndicate* (1964) 53 I.T.R. 225, 229 (S.C.) ; *State of Orissa v. Babulal Chappolia* (1966) 18 S.T.C. 17 (S.C.)].

In fact, an appeal is merely the continuation of the original proceedings and unless some fetters are placed upon the powers of the appellate authority by express words, he exercises the same power as does the original authority. [*C. I. T. v. Kanpur Dal & Rice Mills* (1970) 25 S.T.C. 116 (All.)].

Opportunity to be heard.—The assessing officers and the appellate authorities acting under this Act exercise *quasi-judicial* functions and their procedure must conform to the rules of natural justice. [*Commissioner of S. T., M. P. v. Mangilal Rameswardayal* (1964) 15 S.T.C. 326 (M.P.)]. He is required to proceed without bias and give sufficient opportunity to the assessee to place his case before him as well as to meet allegations made out against him. In other words, he is bound to conduct himself in accordance with rules of justice, equity and good conscience. [*Gangaram Balmukund v. C. I. T., Punjab* 5 I.T.R. 464 (Lah.)]. Therefore, when an appellant claims the benefit of the proviso and prays for being permitted to file his appeal on paying a lesser amount of tax, the appellate authority has to give to the appellant an opportunity of being heard. [*C. S. T. v. Mangilal Rameswar Dayal* (1964) 15 S. T. C. 327 (M. P.) ; *Mahadayal Prem Chandra v. Comm. Tax Officer, Calcutta* (1958) 9 S.T.C. 428 (S.C.)]. The Supreme Court interfered with assessments on the ground that the appellants were not given an opportunity to meet the points urged against them and the whole procedure was contrary to law.

10A. (1) The Commissioner may call for and examine the record of any proceeding under the Act, and if he considers that any order passed therein by any officer other than himself, is erroneous in so far as it is prejudicial to the interest of revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such orders thereon as the circumstances of the case justify, including an order enhancing or modifying

the assessment, or cancelling the assessment and directing a fresh assessment.

(2) In the case of any order other than an order to which sub-section (1) applies, passed under this Act by any officer other than himself, the Commissioner may of his own motion, and in the case of an order passed under section 10, also, subject to such rules as may be prescribed, on a petition by an assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such enquiry or cause such enquiry to be made, and subject to the provisions of this Act, may pass such order thereon not being an order prejudicial to the assessee, as he thinks fit :

Provided that the Commissioner may dispense with the enquiry required to be made under this sub-section, if he, for reasons to be recorded, considers such enquiry to be unnecessary.

(3) In the case of a petition for revision under sub-section (2) by an assessee, the petition shall be made within ninety days from the date on which the order in question was communicated to him or the date on which he otherwise comes to know of it, whichever is earlier :

Provided that the Commissioner before whom the petition is filed may admit it after the expiration of the period of ninety days if he is satisfied that for reasons beyond the control of the petitioner or for any other sufficient cause, it could not be filed within time.

Explanation.—An order by the Commissioner declining to interfere shall, for the purpose of this section, be deemed not to be an order prejudicial to the assessee.

LEGISLATIVE HISTORY

Section 10A was originally inserted by Assam Act XIII of 1952. It reads as follows :—

"10A. Power of revision.—Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner may, on an application by a person aggrieved by any order, filed within ninety days of that order, or of his own motion, revise any order passed under this Act by any officer subordinate to him :

Provided that no order prejudicial to a person shall be passed without giving him a reasonable opportunity of being heard."

It was substituted by Assam Act XII of 1959 by the following—

10A. Revision.—(1) The Commissioner may out of his own motion call for and examine the records of any proceedings which have been taken under this Act by any officer subordinate to him and revise, subject to the provisions of this Act, and after such enquiry as may be deemed necessary, any order passed in such proceedings :

Provided that no order prejudicial to a person shall be passed under this sub-section without giving him a reasonable opportunity of being heard.

(2) The Commissioner may also on petition filed within sixty days of the service of the order passed under section 10 and after giving the petitioner an opportunity of being heard pass such order as he thinks fit.

By Assam Act XVII of 1971 it was substituted by section 10A in its present form. The substituted section came into force with effect from 1. 8. 1971.

Sub-section (1) has armed the Commissioner of Taxes with the power of revising any order passed by any officer subordinate to him which is erroneous and prejudicial to the interest of the revenue. As the Department has no right of appeal to Assistant Commissioner of Taxes (Appeals), this power has been vested in the Commissioner to arm him with the powers of revising any order which is erroneous and prejudicial to the interest of revenue.

Sub-section (2) empowers the Commissioner to revise any order in favour of the assessee. Powers under sub-section (2) may be exercised *suo moto* or on application by an assessee.

Distinction between Appellate and Revisional Jurisdiction.—The essence of revisional jurisdiction, as contrasted with the appellate jurisdiction, is that the revisional jurisdiction is discretionary whereas the appellate jurisdiction has to be exercised on an appeal preferred as of right. A right is conferred upon parties to appeal and the appeal becomes a continuation of the original proceedings. In continuing the original proceedings it may become necessary for the appellate court to admit the original evidence. The power exercised by the revisional Court is not that of continuing the original proceedings but of examining what has already taken place with a view to determine whether what had already taken place suffers from any illegality or impropriety. [C. S. T. v. Ujjal Singh Autar Singh (1968) 22 S.T.C. 26, 37 (All) ; East Asiatic Co. (India) Ltd. v. State of Madras (1956) 7 S.T.C. 211, 314 (Mad.) ; Lata Mongeshkar v. Union of India (1959) 35 I.T.R. 527 (Bom.) ; Ramniklal Tribhowandas v. V. R. Amin (1961) 42 I.T.R. 92 (Bom.) ; K. B. Sipahimalani v. Fidahussein (1956) 58 Bom. L.R. 344 ; Suraj Narain Anand v. State of N.W.F.P., A.I.R. 1942 F.C. 47 ; Chappan v. Moiddin Kutti (1899) I.L.R. 22 Mad. 68 ; State of Madras v. Asher Textiles (1959) 10 S.T.C. 584 (Mad.) ; Rohtas Industries v. State of Andhra Pradesh (1961) 12 S.T.C. 693 (A.P.)].

Form and presentation.—No form has been prescribed by the Rules for a revision petition. Rule 23A provides that a petition for revision under section 10A shall contain all the particulars mentioned in Rule 20 and 21 and may be disposed of in the manner laid down in rules 21A and 22.

For detailed provision on the subject see commentary on section 10 under the heads "Form and presentation" and "hearing of appeals".

CHAPTER V

DEMAND, PAYMENT AND RECOVERY

11. Notice of demand.—Where any tax or penalty is payable in consequence of any order passed under or in pursuance of this Act, the assessing authority shall serve on the person concerned a notice of demand in the prescribed form specifying the amount so payable.

Section 11 makes it mandatory on the part of the assessing authority to serve on the person liable to pay tax or penalty, a notice of demand in the prescribed form specifying the amount payable [*Misri Bai v. Income-tax Officer* (1964) 51 I.T.R. 487 (A.P.)]. Form V is the form of notice of demand prescribed under Rule 24 of the Rules framed under this Act. If a notice of demand is not in the proper form, the person cannot be regarded as a defaulter and no question of recovery under this Act will arise. [*Murlidhar Jalan v. Income-tax Officer* (1961) 41 I.T.R. 80 Assam)].

Payable in consequence of any order passed under or in pursuance of this Act.—A notice of demand under this section can only be served provided any tax or penalty is payable in consequence of any order passed under this Act. Therefore, the condition precedent to the validity of a notice of demand is an order passed under this Act and the notice is merely consequential upon that order. If there is no order under the Act, then no notice of demand can be served under section 11. [*N. N. Kotak v. C. I. T.* (1952) 21 I.T.R. 78 (Bom.); *Mahadeo Ganga Prasad v. I. T. O.* (1966) 61 I.T.R. 384 (Bom.)]. The order in consequence of which the tax or penalty is payable must also specify the amount of tax or penalty. If the order does not specify the amount of tax or penalty, the order is bad in law and the notice of demand following the invalid order will be equally bad [*N. N. Kotak v. C. I. T.* (1952) 21 I.T.R. 78 (Bom.)].

Fresh notice of demand on reduction etc., of tax in appeal or revision etc.—Where a notice of demand is given in respect of tax determined by the assessment order and the subsequent orders in appeal or revision either enhance or reduce the amount of tax demanded, a fresh notice of demand should be issued. [*I. T. O. v. Segu Buchiah Setty* (1964) 52 I.T.R. 538 (S.C.)].

12. Dues when payable.—The tax or penalty under this Act shall be paid in the manner hereinafter provided.

(2) Every person liable to furnish a return under sub-section (1) of section 7 shall, before he furnishes the return, pay into a Government treasury the full amount of tax due on the basis of such return and shall furnish, along with the return, a receipt from such treasury in token of such payment.

(3) The principal officer deducting any tax under section 9 shall pay the amount to a Government treasury within thirty days of such deduction and shall furnish, along with the returns required to be made under sub-section (2) thereof, a receipt from such treasury in token of such payment.

(4) The amount of tax or penalty due under this Act—

(a) in excess of payment already made, or

(b) where no payment has been made,

shall be paid by such date as may be specified in the notice of demand and, where no such date is specified, it shall be paid within thirty days of service of the notice of demand.

Section 12 prescribes the manner of payment of tax or penalty payable under this Act.

Sub-section (2) of section 12 provides that tax due on the basis of the return should be paid in the Government treasury before furnishing the return and a receipt from the treasury in token of such payment should be furnished along with the return.

Sub-section (3) prescribes the manner of payment of tax deducted at source under section 9 by the principal officer. Such tax should be paid into the Government treasury within thirty days of such deduction and a receipt showing such payment should be furnished along with the return furnished by the principal officer.

Sub-section (4) provides for the payment of tax or penalty due in excess of the amount already paid and in cases where no payment has been made.

Thus the process of payment laid down in this section can be divided into two parts—

(i) payment before assessment ; and

(ii) payment after assessment.

Payment before assessment.—Sub-sections (2) & (3) enjoin a duty upon the person liable to submit return under section 7(1) of the Act and the

principal officer deducting tax at source to deposit the tax voluntarily before submission of the return required under the Act.

Payment after assessment.—Sub-section (4) deals with payment of tax or penalty after assessment. If as a result of any assessment made or any order passed, it is found that any sum is payable by a person, the assessing authority shall, as prescribed by section 11, serve a notice of demand in the prescribed form on the assessee. On receipt of such demand notice such tax or penalty must be paid by such date as may be specified in the notice and in cases where no date is specified, within 30 days from the date of service of the demand notice.

13. Mode of recovery.—(1) Where any tax or other dues payable under this Act is not paid on or before the due date the person shall be deemed to be in default :

(2) Where a person is in default, the assessing authority may, in his discretion direct that, in addition to the amount due a sum not exceeding that amount shall be recovered from the defaulter by way of penalty.

(3) Where a person is in default, the assessing authority shall, unless action has been taken under section 9A, order that the amount due shall be recoverable as an arrear of land revenue and shall proceed to realise the amount due as such.

LEGISLATIVE HISTORY

Section 13, in its present form was substituted by Assam Act XIII of 1952 for the following :

“13. **Mode of recovery.**—(1) When the tax payable by a person under this Act is not paid within the due date, the assessing authority may, in his discretion, direct that, in addition to the tax payable, a sum not exceeding the amount of tax shall be recovered by way of penalty.

(2) The tax or penalty shall be recoverable as an arrear of land revenue.”

By Assam Act XVII of 1971, the proviso to sub-section (1) was deleted. The proviso read :

Provided that where a person has presented an appeal or petition for revision and such appeal or petition for revision has been admitted, he shall not be deemed, for so long as the appeal or petition for revision remains pending, to be in default in respect of the portion of the dues in dispute.

If a person fails to pay the demand in respect of any dues under this Act on or before the due date, such person is deemed to be in default. Once a person is deemed to be in default under sub-section (1), he becomes liable

to penalty under sub-section (2). Besides, in such a case the assessing authority may order that the amount due shall be recoverable as an arrear of land revenue and proceed to realise the amount due as such.

Penalty for non-payment—sub-section (2).—Sub-section (2) provides for imposition of penalty in cases where a person is in default. The extent of penalty must depend upon the circumstances of the case and it has been left to the discretion of the assessing authority subject to the maximum prescribed which is equal to the amount due. The penalty is in addition to the amount due. Sub-section (2) also does not specifically provide for an opportunity to be given to an assessee to show cause before actual imposition of penalty. Yet for the ends of justice, such an opportunity has to be given.

A penal provision like section 13(2) cannot be enforced without hearing the affected person even though there is no provision in the Act with regard to the procedure of hearing the matter under this section. The very nature of the proceeding postulates that the principles of natural justice have got to be observed. Therefore, where no notice is given to the assessee before imposing penalty under section 13(2) of the Act for non-payment of taxes, the order imposing penalty will be void and liable to be quashed. [*Tarulata Syam v. Agri. I.T.O.* (1975) 99 I.T.R. 532 (Gau.)].

Procedure of recovery.—Sub-section (3) provides the various modes of recovery. Where a person is in default, the amount may be recovered—

- (1) by taking action under section 9A i.e., by requiring the principal officer to deduct from any payment due to be defaulter, or
- (2) as an arrear of land revenue.

Sub-section (3) provides a rough and ready method for the realisation of the arrears of tax under this Act which may be collected as arrears of land revenue. The Act, however, does not prohibit the use of other remedies which may be available to the authority under law. The mode of recovery which has been provided under this section is to realise the amount as an arrear of land revenue. In Assam, there are two parallel enactments to deal with such recoveries viz. The Bengal Public Demand Recovery Act, 1913 and the Assam Land Revenue Regulation, 1886.

CHAPTER VI

REFUNDS

14. Refunds.—Any person who has paid any tax or penalty in excess of the amount due under this Act may, within ninety days of the service of the order of assessment or that passed on appeal or revision as the case may be, apply for a refund and the amount paid in excess shall be refunded accordingly.

LEGISLATIVE HISTORY

Section 14 was substituted by Assam Act XIII of 1952 for the following :—

"14. Refunds.—Any person who has paid any tax or penalty in excess of the amount due under this Act may, within ninety days of such payment apply to the assessing authority for a refund and such authority shall refund the amount paid in excess."

This section lays down the manner of refund of any tax or penalty paid by a person in excess of the amount due under this Act.

Limitation.—The application for refund must be made within ninety days from the service of the order of assessment or order passed on appeal or revision, as the case may be.

No claim for any refund can be allowed unless it is made within the period of ninety days specified in section 14.

Procedure.—Any person claiming refund under this section must make an application claiming such refund.

Rules 31 to 33 lay down the manner of claiming and granting refunds.

Under Rule 31 an application for refund should be made to the Superintendent of Taxes and such application should be duly signed and verified and should include the necessary particulars specified in the said Rule.

The application may be presented by the assessee or it may be sent by post.

Refund by the Superintendent.—Where the Superintendent of Taxes is satisfied that the refund claimed is due, wholly or in part, he will record an order sanctioning the refund (*Rule 32*) and issue a refund voucher in the prescribed form in favour of the claimant (*Rule 32A*).

CHAPTER VII

OFFENCES AND PENALTIES

15. Failure to make returns, etc.—Whoever—

(1) fails, without reasonable cause, to submit in due time any return as required by or under the provisions of this Act or submits a false return ; or

(2) fails or neglects, without reasonable cause, to comply with any requirement made of, or any obligation laid on, him under the provisions of this Act, or

(3) fraudulently evades payment of any tax due under this Act or conceals his liability to such tax ;

shall, on conviction before a Magistrate and in addition to any tax or penalty or both that may be due from him, be punishable with imprisonment which may extend to six months or with fine not exceeding five hundred rupees or with both.

This section enumerates certain offences punishable under this Act. Whoever commits an offence enumerated in this section is punishable under this section.

The proceedings under this section are not purely of a criminal nature, but quasi-criminal. The standard of proof required from the prosecution in such cases is not so rigid and rigorous as in the case of an offence under the Indian Penal Code or other enactments of a similar kind. Though in such quasi-criminal cases also it is incumbent upon the prosecution to prove affirmatively that the offence has been committed, it would be sufficient to shift the onus to the assessee, if *prima facie* proof of the liability of such assessee has been furnished by the prosecution. [*Narsingamuthye Chettiar, In re* (1948) 1 S.T.C. 180 (Mad.)].

Mens rea is not an essential ingredient of every default unless of course the particular clause defining or constituting the offence has used such words as 'wilfully', 'intentionally', 'knowingly', 'fraudulently' or 'dishonestly'. [*Hiralal v. State* (1956) 6 S.T.C. 662, 668 (All.)]. Expression "without reasonable cause" also bring in the element of *mens rea*.

Clause (1).—Under clause (1) the defaults contemplated are of two types—

1. Any person fails without reasonable cause to submit in due time any return as required by or under the provisions of this Act ; or
2. any person submits a false return.

The mere failure to file the return in due time will not make the person liable to punishment for offence under this clause. The department must prove that the assessee had reasonable opportunity for filing it within time. The public policy requires that ignorance of law is no excuse. But there is no presumption that everybody knows the law, though it is often so stated. It has to be proved that the person acted in defiance of law and was guilty of conscious disregard of his obligation. [*Hindustan Steel Ltd. v. State of Orissa* (1972) 83 I.T.R. 26 S.C.].

Submission of false return is also punishable under this clause. If the return furnished by a assessee is false, he will be liable to be convicted for an offence under this clause. The word "false" has two distinct meanings : (1) intentionally or knowingly or negligently untrue ; (2) untrue by mistake or accidentally, honestly after exercise of reasonable care. [*Metropolitan Life Insurance Co. v. Adams Munn. App. 37A. 2d. 345, 350 referred to in A.I.R. 1969 M.P. 213*]. The word "false" in its juristic use implies something more than a mere untruth. [*Dombroski v. Metropolitan Life Insurance Co. 126 N.L.J. 545*]. It sometimes connotes an intent to deceive. [*People v. Wahl, 39 Cal. App. 777*]. The word "false" may be used in a wider or narrower sense. In wider sense it will embrace all types of falsehoods whether they be intentional or innocent but in narrower sense it will cover only such falsehoods which are intentional. The question whether in particular enactment the word "false" is used in a restricted sense or in a wider sense would depend on the context in which it is used. [*C. S. T. v. Bombay Central Stores, A.I.R. 1969 M.P. 213*].

There is a presumption that a guilty intent is an essential element of a statutory offence and this presumption is made punishable with a sentence of imprisonment. This presumption can be rebutted by showing that the object of the statute will be defeated unless the language used in the enactment is construed in a wider sense to include otherwise innocent persons. From the scheme of this clause, it is apparent that the word "false" has been used in a narrower sense. This interpretation is strengthened by the language of the earlier part of the clause where the words "without reasonable clause" have been used with failure to submit return.

Clause (2).—Clause (2) is general in nature. It provides that whoever fails or neglects, without reasonable cause, to comply with any requirements made of, or any obligation laid on him under the provisions of this Act shall be liable to punishment. In this clause also the words "without reasonable cause" have been used which shows that a mere failure to perform a statutory obligation is not an offence. The authority must prove that the assessee obliged either acted deliberately in defiance of law or was guilty of conduct

contumacious or dishonest or acted in conscious disregard of its obligation [*Hindustan Steel Ltd. v. State of Orissa* (1972) 83 I.T.R. 26 (S.C.)].

Clause (3).—Clause (3) makes the following acts punishable under the Act—

- (1) fraudulent evasion of tax due under this Act ;
- (2) concealment of liability to tax under this Act.

From a reading of this clause it is clear that evasion to be punishable should be fraudulent.

Fraudulent evasion will have to be inferred from the facts and circumstances of each case. Under section 25 of the Indian Penal code a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

Under the second part of clause (3) of section 15 concealment of liability to tax under this Act is an offence.

The word “conceal” implies something more than mere failure to disclose. It pertains to an affirmative action likely to prevent or intended to prevent knowledge of a fact and refers to some advantage to the concealing party or disadvantage to some interested party from whom the fact is withheld. Webster in his Dictionary gives the meaning for the word ‘conceal’ as “to hide, withdraw from observation or to cover to keep from sight.” Secrecy is an essential ingredient of the act of concealment. To constitute ‘concealment’ it must appear that the statement or act of the person was calculated and designed to prevent discovery of the act with which he is charged. His act must be misleading, false or deceptive. There is an element of *mens rea* in the matter of furnishing particulars. When interpreting the statutory offence it is very difficult to produce adequate proof of guilty knowledge ; that is doctrine of *mens rea*. [*A. V. Thomas & Co. (India) Ltd.* 59 I.T.R. 499, 503].

Sentence.—The offences under this section are of different degrees of moral turpitude. They range from mere infringement of a rule to conscious and deliberate making of false returns. Under these circumstances the sentence to be awarded by the Magistrate will depend upon the gravity of the offence committed and not upon the fact that the accused pleaded guilty and made an attempt to defend. [*Kapur Chand Pukhraj v. State of Bombay*, 9 S.T.C. 455, S.C.].

Maximum sentence provided for in law should be reserved for exceptionally bad cases [*Fida Ali Sekh Ali v. State of Bombay* (1952) 3 S.T.C. 58]. Capacity to pay is no criterion and merely because an accused is in a position to pay is no ground for inflicting maximum or heavy fine [*Gangasagar v. Emperor A.I.R. 1921 All. 1919*].

The maximum sentence provided under this section is imprisonment which may extend to six months or with fine not exceeding five hundred rupees or with both. This is in addition to any tax or fine or both that may be due from such person.

CHAPTER VIII

MISCELLANEOUS

16. Power to compel attendance, etc.—(1) The assessing authority may, by a written notice require any person to attend before him and to give evidence or produce documents, as the case may be, for the purpose of determining the liability of himself or of any other person to taxation under this Act.

(2) Such person shall on such requisition be legally bound to attend and give evidence or produce documents, if in his power and possession, as the case may be, at the place and time specified in such notice, and whoever is required to produce a document may either attend and produce it or cause it to be produced.

This section empowers the assessing authority to require any person to attend before him and to give evidence or produce documents as the case may be. This power can be exercised for the purpose of determining the liability of such person or of any other person to taxation under this Act.

A written notice for the purpose is necessary. On receipt of such notice, such person is legally bound to comply with the requirements of the notice. Failure on the part of such person is punishable as an offence under section 15(2) of this Act.

17. Information to be furnished by the principal officer.—The assessing authority may demand from the principal officer of any Government, local authority, company, firm or other association of persons the names and complete addresses of all or any of the persons who have been, or are, in the employment of such Government, local authority, company, firm or other association

of persons and such principal officer shall thereupon furnish the assessing authority with the names and addresses so demanded.

Section 17 empowers the assessing authority to demand from certain employees including the principal officer of any Government the names and complete addresses of all or any of the persons who have been, or are, in the employment of such person. It also casts a duty upon such person to furnish the information so required from him. Failure on the part of such person to furnish the required information called for under this section is punishable under section 15(2) of this Act.

Rule 37 of the Assam Professions, Trades, Callings and Employments Taxation Rules, 1947 casts a further duty on the disbursing officer, in cases of transfer of a person in employment of the State or the Central Government from one district to another, to send intimation of such transfer to the disbursing officer of that other district along with the issue of the last pay certificate.

In cases of transfer of persons in employment, other than person in employment of the State or Central Government to another district or outside the State, a duty has been cast on the principal officer to send intimation of such transfer to the assessing authority within 15 days of such transfer (Rule 38).

17A. Prosecution, suits or other proceedings.—No suit shall be brought in any civil court to set aside or modify any assessment made or order passed under the provisions of this Act, and no prosecution, suit or other proceedings shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act or the rules made thereunder.

LEGISLATIVE HISTORY

Section 17A was inserted by Assam Act XIII of 1952.

This section bars two kinds of proceedings—

- (1) suits in Civil Courts to set aside or modify any assessment made or orders passed under the provisions of this Act ;
- (2) prosecution, suit or other proceedings against any officer of the Government for anything in good faith done or intended to be done under this Act or the rules made thereunder.

The first part thus saves assessments or orders passed under the provisions of this Act from interference by a Civil Court and the second part gives immunity to the officers of the Government for anything in good

The maximum sentence provided under this section is imprisonment which may extend to six months or with fine not exceeding five hundred rupees or with both. This is in addition to any tax or fine or both that may be due from such person.

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A written notice for the purpose is necessary. On receipt of such notice, such person is legally bound to comply with the requirements of the notice. Failure on the part of such person is punishable as an offence under section 15(2) of this Act.

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of persons and such principal officer shall thereupon furnish the assessing authority with the names and addresses so demanded.

Section 17 empowers the assessing authority to demand from certain employees including the principal officer of any Government the names and complete addresses of all or any of the persons who have been, or are, in the employment of such person. It also casts a duty upon such person to furnish the information so required from him. Failure on the part of such person to furnish the required information called for under this section is punishable under section 15(2) of this Act.

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The first part thus saves assessments or orders passed under the provisions of this Act from interference by a Civil Court and the second part gives immunity to the officers of the Government for anything in good

faith done or intended to be done under this Act or the rules made thereunder.

The Act itself provides full machinery for appeal and revision to set aside or modify assessments or other orders and the remedy granted under the Act itself is exhaustive. So interference by Civil Court is barred.

The prohibition contained in this section is express and unambiguous and on a fair construction of the section a suit cannot be entertained by a Civil Court, if, by instituting the suit, the plaintiff wants to set aside or modify any assessment or other order made under this Act. The expression "any assessment made under this Act." is wide enough to cover all assessments made by the appropriate authorities under the Act whether the said assessing officer acting as such officer which is intended to be protected and as soon as it is shown that exercising his jurisdiction and the authority under the Act, an assessing officer has made an order of assessment, that clearly falls within the scope of this section. The fact that the order passed by the assessing authority may in fact be incorrect or wrong does not affect the position that in law the said order has been passed by an appropriate authority and the assessment made by it must be treated as made under the Act. Where, therefore, an order of assessment has been made by an appropriate authority under the provisions of the Act, any challenge to its correctness and any attempt either to have it set aside or modified must be made before the appellate or the revisional forum prescribed by relevant provisions of the Act. A suit instituted for that purpose would be barred under this section. If the order made by the taxing authority under the relevant provisions of the Act in a case, where the taxable character of the transaction is disputed, is final and cannot be challenged in a civil court by a separate suit the position would be just the same where the taxable character of the transaction is not even disputed by the assessee who accepts the order for the purpose of the Act and then institutes a suit to set it aside or to modify it. (*Firm of Illuri Subbayya Chetty and Sons v. The State of Andhra Pradesh* (1963) 14 S.T.C. 680 (S.C.)).

In a case where no assessment had been made under this Act and no assessment or order under this Act was called into question in the suit, section 17A of the Act did not bar the suit. [*The State of Bombay (now Gujrat) v. Jagmohandas and Another* (1966) 17 S.T.C. 529 (S.C.) ; *The State of Tripura v. Province of East Bengal* (1951) 19 I.T.R. 132 (S.C.) applied]. The word "assessment" in section 17A does not include a mere filing of a return and payment by an assessee ; it has reference to assessments made under the Act. [*The State of Bombay (now Gujrat) v. Jagmohandas and Another* (1966) 17 S.T.C. 529 (S.C.)].

The Supreme Court examined this point again in the case of *Dhulabbhai v. State of Madhya Pradesh* [(1968) 22 S.T.C. 416 (S.C.)]. The result of the enquiry into the cases decided by the Supreme Court is :—

(1) Where the statute gives a finality to the orders of the special tribunals, the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. (2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not. (3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a reference from the decision of the tribunals. (4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit. (5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limit or illegally collected, a suit lies. (6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry. (7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

Immunity of the Officers of the Government.—The latter part of this section gives immunity to the officers of the Government for anything done by them in good faith or intended to be done under this Act or Rules made

thereunder. They are protected from prosecution, suit or other proceedings. The immunity under this section is conditional upon the officers having acted in good faith. If after the correct legal position is pointed out by a judgment of the court, the officer still persists in acting contrary to that judgment, this action would not be saved by the provisions of this section. [*Govt. Gen.-in-C. v. Shiromani Sugar Mills Ltd. (In Liq.) (1946) 14 I.T.R. 248, 265 (F.C.)*; *Pragdas Mathuradas v. I.T.O. (1950) 18 I.T.R. 757, 762 (Cal.)*].

The protection conferred by this section can only be claimed by a person who can plead that he was required to do or omit to do something under the Act or that he intended to comply with any of its provisions. It cannot confer immunity in respect of actions which are not done under the Act but are done contrary to it. Even assuming that an Act includes an omission as stated in the General Clauses Act, the omission also must be one which is enjoined by the Act. It is not sufficient to say that the act was honest. That would bring it only within the word "good faith." It is necessary further to establish that what is complained of is something which the Act requires should be done or should be omitted to be done. There must be a compliance or an intended compliance with a provision of the Act, before a protection can be claimed. The section cannot cover a case of a breach or an intended breach of the Act however honest the conduct otherwise. [*State of Gujrat v. Kansara Manilal A.I.R. 1964 S.C. 1893*].

The immunity given to the Government officers is not merely in respect of acts authorised by the Statute but also acts done without jurisdiction but in the bonafide belief that they were authorised. [*Secy. of State v. Meyyappa Chettiar (1936) 4 I.T.R. 341, 352 (Mad.)*; *Kesarichand Kaverlal v. Nayudu (1942) 10 I.T.R. 413 (Mad.)*].

The expression "intended to be done" in this part of the section signifies futurity so as to preclude suits in respect of proceedings "intended" to be taken by the officer. [*Secy. of State v. Meyyappa Chettiar (1936) 4 I.T.R. 341 (Mad.)*; *Raja Bahadur Kamakhya Narain Singh v. Union of India (1964) 51 I.T.R. 596, 612 (Pat.)*].

The term "good faith" has been defined in section 3(20) of the General Clauses Act. A thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not. For example, an officer who believed bonafide that he had power to detain books of account produced before him will be protected but not if he did so knowing that he had no power. [*Pragdas Mathuradas v. I.T.O. Calcutta (1950) 18 I.T.R. 757 (Cal.)*. See also *Governor-in-Council v. Shiromani Sugar Mills (1946) 14 I.T.R. 248 (F.C.)*].

17B. In computing the period of limitation prescribed for an appeal or a revision, the day on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded.

LEGISLATIVE HISTORY

Section 17B was inserted by Assam Act XIII of 1952.

This section lays down the procedure for computing the period of limitation prescribed for an appeal or revision. It provides that—

- (1) the day on which the order complained of was made and
 - (2) the time requisite for obtaining a copy of such order,
- shall be excluded in computing the period of limitation for an appeal or revision.

In order to entitle the assessee to exclude the time requisite for obtaining a copy of the order complained of, it is necessary that the application for a copy should comply with all the legal requirements. If the application for a copy is made by an agent not properly authorised in that behalf or it is not properly stamped [*Basantilal Ramjidas v. C.I.T. 5 I.T.C. 383*] the period which elapses between the making of the invalid application and putting the application in order cannot be excluded in computing the period of limitation.

The language of the section is plain and it expressly mentions in the section that the period spent in obtaining copy of the impugned order shall be excluded. Such exclusion is not subject to any condition that it should be obligatory to file a copy of the impugned order with the memorandum of appeal. [*C. I. T. v. Babu Ramchandra Bhan (1969) 27 Tax (1), 41 ; Sardarmal v. I. T. Commr., A.I.R. 1963 Assam 181*].

18. Place of assessment.—Any person liable to pay tax under this Act shall ordinarily be assessed by the assessing authority of the area in which he carries on a trade, or follows a profession or calling or is in employment.

The place of assessment is determined by this section. A person liable to pay tax under this Act is to be assessed ordinarily by the assessing authority of the area in which (1) he carries on trade, or (2) follows a profession or calling, or (3) is in employment.

Rule 34(1) of the Rules further provides that an assessee shall ordinarily be assessed by the Superintendent within whose jurisdiction the assessee carries on a trade or follows a profession, or calling or is in employment.

Where the trade, profession, calling or employment is carried on in more places than one, he will be assessed by the Superintendent of the area in which the principal place of trade, profession, calling or employment is situated.

Where any question arises as to the place of assessment, such question shall be determined by the Commissioner [Rule 34(2)].

Section 18 is intended to ensure that as far as practicable the assessee should be assessed locally. The object of Rule 34 evidently is to avoid multiplicity of proceedings and consequent anomalies that may arise with reference to the same assessee. [*Bharat Automobiles v. State of Assam* [1957] 8 S.T.C. 573 (Assam)].

19. Power to make rules.—The State¹ Government may, subject to the condition of previous publication, make rules for carrying out the provisions of this Act.

LEGISLATIVE HISTORY

1. The word "State" was substituted for the word "Provincial" by A.E., 1950.
2. In exercise of powers conferred under this section Rules were made and published vide Notification No. BB94/45/72 dated 21. 10. 1947.

This section authorises the State Government to make rules to carry out the provisions of this Act. The Assam Professions, Trades, Callings and Employments Taxation Rules, 1947 were framed in exercise of the powers conferred by this section. Amendments were made to the Rules from time to time.

Previous publication.—The rule-making power of the State Government is subject to previous publication. The period for which the rule should be published as a draft before it is finally confirmed has, however, not been specified. It is necessary for the Government to publish, for the information of the persons likely to be effected, a draft of the proposed rules with a notice specifying the date on or after which the draft shall be taken into consideration. (*Section 25 of Assam General Clauses Act, 1915*). A reasonable time should be given to enable the persons affected to file objections if they so desire and these objections have to be considered before confirmation.

Power to amend etc.—Where under an Act power is given to the Government to issue notifications, orders, scheme, rule or a byelaw, then under section 23 of the Assam General Clauses Act, 1915, that power also includes a power, exercisable in the like manner and subject to the conditions, if any, to add to, amend, vary or rescind any notification, order, rule or bye-law as issued.

THE SCHEDULE

(See Section 4)

Rates of Tax

A. In the case of every person other than a Hindu undivided or joint family :—

Where the total gross annual income	Amount of Tax Rs.
1. Does not exceed Rs. 4,000	Nil
2. Exceeds Rs. 4,000 but does not exceed Rs. 6,000	24
3. " " 6,000 " " 10,000	40
4. " " 10,000 " " 15,000	60
5. " " 15,000 " " 20 000	85
6. " " 20,000 " " 25 000	120
7. " " 25,000 " " 30 000	175
8. " " 30,000 " " 35,000	230
9. " " 35,000 " "	250

B. In the case of every Hindu undivided or joint family :—

1. Does not exceed Rs. 6,000	Nil
2. Exceeds Rs. 6,000 but does not exceed Rs. 10,000	40
3. " " 10,000 " " 15,000	60
4. " " 15,000 " " 20,000	85
5. " " 20,000 " " 25,000	120
6. " " 25,000 " " 30,000	175
7. " " 30,000 " " 35,000	230
8. " " 35,000 " "	250

LEGISLATIVE HISTORY

The present schedule was substituted for the old schedule by Assam Act IX of 1970 with effect from 1. 4. 70.

THE ASSAM PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENTS TAXATION RULES, 1947.*

1. **Preliminary.**—These rules may be called the Assam Professions, Trades, Callings and Employments Taxation Rules, 1947.

2. In these rules, unless there is anything repugnant in the subject or context—

(1) The “Act” means the Assam Professions, Trades, Callings and Employments Taxation Act, 1947,

(2) “Assessee” means a person liable to pay tax,

(3) “Form” means a form prescribed in the Schedule appended to these rules, and

(4) “Section” means a section of the Act.

[(5) The “disbursing officer” means the drawing officer as prescribed in Appendix I of the Treasury Rules and Subsidiary Orders made thereunder and also includes a Treasury Officer or a Sub-Treasury officer]¹.

[3A. **Taxing Authorities.**—Superintendent includes an Additional Superintendent or a Special Superintendent appointed under the Assam sales Tax Act, 1947]².

4. The Commissioner shall exercise such powers and perform such duties as may be required of him by the Act or the rules made thereunder. He shall be responsible for the administration of the Act.

[5A. The Deputy Commissioner shall exercise such powers and perform such duties as may be required of him by the Act or the rules thereunder]³.

[5B. The Assistant Commissioner shall exercise such powers and perform such duties as may be required of him by the Act or the rules thereunder]⁴.

6. * * * * *

7. An Inspector shall exercise such powers and perform such duties as may be specified by the Commissioner.

8. The powers to be exercised and duties to be performed by an Assistant Commissioner, a Superintendent or an Inspector shall respectively be exercised and performed in respect of such areas or assesseees or classes of assesseees as may, by notification in the official gazette, be specified by the Commissioner.

9. * * * * *

*Published in the Assam Gazette vide Notification No. BB. 94/45/72 dated 21.10.1947

1. Inserted by Notification No. FTX. 9/53/12 dt. 25.8.53.

2. Substituted by Notification No. FTX. 9/53/12 dt. 25.8.53.

3. Inserted by Notification No. FTX. 3/59/39 dt. 18.2.60.

4. Renumbered by Notification No. FTX. 3/59/39 dt. 18.2.60.

5. Rule 6 deleted by Notification No. FTX. 9/53/12 dt. 25.8.53.

6. Rule 9 deleted by Notification No. FTX. 9/53/12 dt. 25.8.53.

10. **Returns.**—The return required to be furnished under section 7 shall, on commencement of the Act, be furnished within such time as may be notified in the official gazette by the Commissioner and thereafter within sixty days of the commencement of each financial year.

11. The return shall be furnished in Form 1 and to the Superintendent within the local limits of whose jurisdiction the assessee carries on a trade or follows a profession or calling or is in employment.

12. The notice referred to in sub-section (2) of section 7 shall be served in Form II.

13. **Assessments.**—Assessment orders passed under the provisions of the Act shall be made in Form IIIA, IIIB.

14. **Deductions of tax at source.**—The principal officer acting under subsection (2) of section 9 shall deduct the tax due from each assessee in one instalment :

Provided that the Commissioner [or Deputy Commissioner]¹ may authorise the principal officer to deduct, in respect of such assessee as may be specified with reference to their total gross income, the tax due in more than one instalment.

15. Where tax is to be deducted in one instalment, the deduction shall be made within the period specified in rule 10. In all other cases, the deduction shall be made on such dates on which the instalments fall due.

16. Within thirty days of the completion of the period referred to in rule 10, the principal officer shall furnish a return in Form IV to the Superintendent.

* * * * *

* * * * *

19. **Appeal.**—A memorandum of appeal may be presented to the appellate officer by the appellant or by an agent or it may be sent by post.

20. The memorandum of appeal shall contain, amongst other, the following particulars :—

(a) a statement of the facts of the case,

(b) the grounds on which the petition is filed, and

[(c) the date of service of the order appealed against.]⁴

21. The memorandum of appeal shall be [duly stamped as]⁵ [prescribed in rule 23 and]⁶ accompanied by a certified copy of the order appealed against

1. Inserted by Notification No. FTX. 3/59/39 dt. 18.2.60.

2. Rule 17 deleted by Notification No. FTX 9/53/12 dt. 25.8.53.

3. Rule 18 deleted by Notification No. FTX' 9/53/12 dt. 25.8.53.

4. Inserted by Notification No. FTX. 9/53/12 dt. 25.8.53.

5. Inserted by **Notification No. FTX. 3/59/39** dt. 18.2.60.

6. Substituted by Notification No. FTX. 9/53/12 dt. 25.8.53;

and shall be signed, verified and endorsed by the appellant or his agent to the effect :—

- (a) that the tax not in dispute has been paid, and
- (b) that to the best of his knowledge and belief the facts set out in the memorandum are true.

[21A. An appeal petition may be summarily rejected where any of the requirements of rule 21 are not complied with on presentation of the petition.]¹

22. [Where an appeal petition is not disposed of under rule 21A]² the appellate authority shall fix a day and place for hearing the appeal, and may from time to time adjourn the hearing and make, or cause to be made, such further enquiry as may be deemed necessary.

23. In disposing of an appeal, the appellate authority may :—

- (a) confirm, reduce, annul or enhance the assessment, or
- (b) set aside the assessment and direct a fresh assessment after such enquiry as may be ordered, or
- (c) confirm, reduce or annul the order of penalty.

[23A. **Revisions.**—A petition for revision under section 10A of the Act shall contain all the particulars mentioned in rules 20 and 21 and may be disposed of in the manner laid down in rules 21A and 22.]³

24. **Notice of demand.**—The notice of demand referred to in section 11 shall be in Form V.

25. **Dues, how paid.**—Dues payable under the Act shall be paid direct into the Government treasury by challans. No payment of such dues shall be accepted at the office of Commissioner, Assistant Commissioner or Superintendent.

26. Challans for making payments shall be in Form VI and shall be obtainable at any Government treasury or at the office of the Superintendent.

27. Challans shall be filed in Quadruplicate. Two copies duly signed as proof of payment shall be returned to the assessee or the principal officer as the case may be and the other two copies retained by the treasury.

28. One of the copies retained by the treasury shall be transmitted to the Superintendent along with an advice list. The intervals at which and the dates by which, advice lists are to be transmitted by the treasury shall be laid down by the Commissioner.

1. Inserted by Notification No. FTX. 9/53/12 dt. 25.8.53.

2. Inserted by Notification No. FTX. 9/53/12 dt. 25.8.53.

3. Inserted by Notification No. FTX. 9/53/12 dt. 25.8.53.

29. One of the receipted copies returned to the assessee or the principal officer shall be attached to the return required to be submitted by him to the Superintendent.

30. The receipt of challan shall be entered by the Superintendent in his Assessment register in Form VII.

[31. **Refunds.**—An application for refund shall be made to Superintendent and shall include, amongst other, the following particulars :—

(i) the name of the assessee.

(ii) assessment year for which refund is claimed ;

(iii) the amount of dues already paid together with the Challan No. and the date of payment, and

(iv) the amount of refund claimed and grounds thereof.]¹

31A. An application for refund shall be signed, verified and presented by the assessee or it may be sent by post.

[31B. No claim to any refund shall be allowed unless it is made within ninety days from the date of original order of assessment or within ninety days of the final order passed on appeal or revision, as the case may be, in respect of such assessment.]¹

32. When the Superintendent is satisfied that the refund claimed is due, wholly or in part, he shall record an order sanctioning the refund.

32A. When an order for refund has been passed, a refund Voucher in Form VIII shall be issued in favour of the claimant, if he desires payment in cash. An advice list shall, at the same time, be forwarded to the Treasury Officer concerned.

[32B. A register shall be maintained in Form IX wherein particulars of all applications for refund and the order passed thereon shall be entered.]²

33. A register of refunds shall be maintained in Form IX.

[34. **Place of assessments.**—(1) An assessee shall ordinarily be assessed by the Superintendent within whose jurisdiction the assessee carries on a trade or follows a profession, or calling or is in employment. Where the trade, profession, calling or employment is carried on in more places than one he will be assessed by the Superintendent of the area in which the principal place of trade, profession, calling or employment is situated.

(2) ~~Where~~ any question arises as to the place of assessment, such question shall be determined by the Commissioner.]³

1. Substituted vide Notification No. FTX. 3/59/39 dt. 18.2.60.

2. Substituted vide Notification No. FTX. 3/59/39 dt. 18.2.60.

3. Inserted by Notification No. FTX. 1/49/4 dt. 22.6.49.

[35. Fees.—The following fees shall be payable :—

(a) Upon a memorandum of appeal—Rupees two.

(b) Upon a petition for revision—Rupees five.

(c) Upon any other miscellaneous petition—[25 Naye Paise.]³

Provided that no fee shall be payable in respect of any written objection made in reply to a notice.]¹

[35A. The following fee, shall be payable for certified copies :—

(a) An application fee—25 Naye Paise.

(b) Authentication fees for every 360 words—50 Naye Paise.

(c) One impressed folio for not more than 150 (English) words and extra folio for every 150 additional words or less.

(d) Urgent fee of Re. 1 if an applicant requires his copy to be furnished on the day of submission of the application. In such cases, fees and folios must also accompany the application.

(e) An additional fee of Re. 1 to cover the cost of postage if the applicant wants his copy to be sent to him by post.

(f) A searching fee of Re. 1 if the applicant wants a copy of the order or document which is more than one year old.]⁴

[36. All fees referred to in rule 35 shall be paid in Court Fee Stamps.]⁵

[37. Information to be furnished regarding transfer of an assessee, etc.

If a person who is in employment of the State or Central Government is transferred to another district in the State, the disbursing officer shall send intimation of such transfer to the disbursing officer of that other district and the assessing authority thereof along with the issue of the last pay certificate. On receipt of such intimation, the disbursing officer shall recover the tax and send intimation to the assessing authority only.]⁵

[38. If a person other than that mentioned in rule 37 is transferred to another district or outside the State, the principal officer shall send intimation of such transfer to the assessing authority within 15 days of such transfer.]³

1. Inserted by Notification No. FTX. 9/53/12 dt. 25.8.53.

2. Inserted by Notification No. FTX. 9/53/12 dt. 25.8.53.

3. Substituted vide Notification No. FTX. 3/59/39 dt. 18.2.60.

4. Inserted vide Notification No. FTX. 3/59/39 dt. 18.2.60.

5. Inserted by Notification No. FTX. 9/53/12 dt. 25.8.53.

6. Inserted by Notification No. FTX. 9/53/12 dt. 25.8.53.

SCHEDULE OF FORMS,
THE ASSAM PROFESSIONS TRADES, CALLINGS AND
EMPLOYMENTS TAXATION ACT, 1947.

Form I
RETURN OF INCOME

(See rule 11)

Name of assessee—

Address—

Assessment year—

<i>Sources of income</i>	<i>Total gross income</i>
1	2
	Rs. P.
Profession ..	
Trade ..	
Callings ..	
Employments ..	
Total ..	

Tax payable

Amount paid, vide Challan No. ..

The above statement is true to the best of my knowledge and belief.

Date—

Signature of assessee.

Form II**NOTICE**

(See section 7 and rule 12)

To

Whereas you have not furnished a return under section 7(1) in spite of your liability to do so, you are hereby required to furnish a return of your gross income for the year.....to the undersigned on or before the.....

In the case of your failure to comply with the terms of this notice, you will be liable to summary assessment and other penalties.

Seal.

Date.....

Superintendent.

Form IIIA**ASSESSMENT ORDER**

(See rule 13)

Circle.....

Assessment case No.....

Name of assessee.....

Assessment year.....

Address.....

<i>Sources of income</i>	<i>Gross income</i>
1	2
Professions	
Trades	
Callings	
Employments	
Total ..	
Tax payable	
Amount of tax paid	
Balance due	
Amount of penalty	
Total dues	

Status of assessee.....

Assessed under section.....

Date of assessment.....

Superintendent,

Form IIIB
ASSESSMENT ORDER SHEET
(See rule 13)

Circle.....

Assessment case No..... Assessment year.....

Name of assessee.....

<i>Serial No. and date</i>	<i>Order passed</i>	<i>How complied with and date of compliance</i>
1	2	3

Form IV
RETURN
(See rule 16)

Name of Department (Government), local authority, company, firm, or other association of persons..... Assessment year.....
Name of the principal officer.....

<i>Serial No.</i>	<i>Name of employees</i>	<i>Gross income</i>	<i>Amount of tax payable</i>	<i>Amount realised</i>	<i>Date of payment into the treasury with challan No.</i>	<i>Remarks</i>
1	2	3	4	5	6	7

Forwarded to the Superintendent,
.....

Signature of the principal officer.

Form V
NOTICE OF DEMAND
 (See rule 24)

To

.....
 [It is notified]¹ that for the assessment year the sum of
 Rs. as specified below has been determined as payable by you.
 You are required to pay the amount on or before the to the
 Treasury/Sub-Treasury Officer

at

Agent, Imperial Bank of India

You are further [informed] that unless the dues are paid by the due
 date, a further penalty will be imposed on you and a certificate will
 be forwarded to the Collector for the recovery of the whole amount as an
 arrear of Land Revenue.

Tax

Penalty

Seal.

Date

Superintendent.

Form VI
CHALLAN

(See rule 26—to be printed in quadruplicate)
 XIII—Other Taxes and duties—Professions Tax.

Treasury, Sub-Treasury

Challan of Tax/penalty paid to

Agent, Imperial Bank of India

at for the assessment year

By whom tendered	Name of address of assessee/ principal officer on whose behalf payment is made	Payment on account of—	Amount (in words and in figures)
1	2	3	4
		Tax	Rs.
		Penalty	Rs.

Rupees

Date

Signature.

For use in the Treasury.

Challan No.

Date

Received payment of Rs.

Treasury Officer,

Treasurer.

Accountant.

Agent or Manager.

1. Substituted by Notification No. FTX. 9/53/17 dt. 11.7.55.
2. Substituted by Notification No. FTX. 9/53/17 dt. 11.7.55.

Form VII
ASSESSMENT REGISTER

(See rule 30)

Assessment year.....

Circle.....

[illegible]

Form VIII

REFUND VOUCHER

(See rule 32)

Book No..... Voucher No.....

XIII. Other Taxes and Duties :
Professions Tax.

Refund payable to—

Assessment case No.—

Challan No. and date of original payment.—

Amount of refund allowed—

Date of order—

Signature of Superintendent—

Signature of recipient of the voucher—

Date of encashment—

Form VIII

Book No..... Voucher No.....

XIII. Other Taxes and Duties—Profession Tax.

(Order of refund payable within one month of issue).

To The Treasury/Sub-Treasury officer. at.....
Agent, Imperial Bank of India.Certified that with regard to assessment case No..... of.....
a refund of Rs..... is due to.....
(in words)Certified that the tax concerning which refund is ordered has been
credited in the treasury.Certified that no refund order in respect of this sum has previously been
granted and this order of refund has been entered in the assessment record.Please pay to..... the sum of Rs.....
(in words)

Seal.

Superintendent.

Received payment.

Signature of Claimant.

Pay Rs.....

Treasury/Sub-Treasury officer.

Agent or Manager.

Date.....

Date.....

Form IX
REFUND REGISTER
 (See rule 33)

Circle.

Assessment year	Serial No.	Name of applicant	Amount of refund Allowed	Challan No and date of encashment	Remark :
1	2	3	4	5	6